

RULE 46: SERVICES PREMIUM VALUE CONCESSIONS PROGRAM

1. INTRODUCTION

The Department of Aviation created the Services Premium Value Concessions Program (“SPVC Program”), described in this Rule, for Service Concessions at Denver International Airport (the “Airport” or “DIA”). The SPVC Program measures, recognizes, and rewards top performing SPVC Program participants with a “Program Benefit”, which is the opportunity to enter into direct negotiations for a new Concession Agreement. SPVC Program performance is measured by Concession Agreement compliance and customer service. It is desirable for DIA to retain its best Concessions, as they are most likely to offer the best overall performance in Concession Agreement compliance and customer service, the combination of which can lead to greater revenues to DIA.

To ensure objectivity in awarding Program Benefits, this Rule defines specific performance criteria and methods for measuring and comparing the performance of Service Concessions against other Service Concessions and a sampling of Service Concessions at other United States airports. This Rule also defines the duties of a “Third Party Administrator,” who will run the day to day operations of the SPVC Program on behalf of the Airport.

1.01 Definitions

Airport or DIA- Denver International Airport

Average Competitor Airport Score- Regards External Customer Service Scoring and is an average score of the DIA management-selected competitor airports. The Average Competitor Airport Score shall be calculated from all of the competitor airports’ secret shopped service concessions.

Average Contract Score- Regards Internal Customer Service Scoring and is an average score of all of a Service Contract’s concession locations, whether there is one or more than one such concession locations. Whether a Service Contract has either one or more than one concession locations, this Rule will hereafter refer to the Service Contract’s monthly scores as “Average Contract Score.”

City- City and County of Denver

Developer- A sub-lessee or sub-licensee of an entity that has entered into an agreement with the Airport to operate, merchandise, sub-license, or sub-lease certain spaces.

DRMC- Denver Revised Municipal Code

DSBO- Division of Small Business Opportunity

MAP- Month Average Point. Monthly points are earned at the Service Contract level. The MAP is calculated as the total points (including Training points) accumulated during the Service Contract's Operating Period and divided by its Operating Period Denominator.

Operations Criteria- Concession agreement defaults during the Operations Evaluation Period classified as either Tier 1 or Tier 2.

Operations Evaluation Period- The time period commencing on the later of the SPVC Program Start Date ("PSD") or Concession Agreement's Required Opening Date and shall continue through the Service Contract's Operating Period.

Operating Period- The months when scoring criteria points are accumulated. For Full Phase participants, it is usually the 36 months prior to the 16 months prior to the contract agreement expiration.

Operating Period Denominator- The number of months when scoring criteria points were accumulated, which for Full Phase participants, is usually 36. The Operating Period Denominator will be less than 36 for any number of months when less than 2/3 of the Service Contract's locations were secret shopped.

Program Benefit- Allows Service Contract concessionaire to enter into direct negotiations for a new Concession Agreement rather than competing for concession space through the normal Request for Proposal process.

Programs- SPVC Program and PVC Program

PSD- Program Start Date. First day of the month in which Rule 46 has become an official Airport rule.

RFP- Request for Proposal

TPA- Third Party Administrator

Service Contract- The various number of concessions and concession locations that exist on a single contract agreement. Level at which the Program Benefit is measured and awarded.

SPVC Program- Services Premium Value Concessions Program

SPVC Program Costs- Any reasonable cost incurred by DIA or its TPA related to the Programs shall be

considered a reimbursable cost to administer the SPVC Program.

1.02 Program Benefit

The Program Benefit allows Service Contract concessionaire to enter into direct negotiations for a new Concession Agreement rather than competing for concession space through the normal Request for Proposal (“RFP”) process. Those negotiations will provide the opportunity to execute a new concession agreement at the standard terms in effect at the time of the new agreement for the Services category, subject at all times to the requirements of this Rule. Standard terms shall include, but not limited to, rental rates, minimum capital investment, term length, and surety requirements.

The Program Benefit shall be earned and awarded by the Service Concessionaire’s particular contract (“Service Contract”); that is, should a Service Contract earn the Program Benefit, any and all of the eligible concession locations within that Service Contract will earn the Program Benefit. Monthly points earned leading toward Program Benefit determination shall be determined by average scores of any multiple concession locations within the Service Contract.

The Program Benefit scoring methodology is described Section 8.

1.03 Applicability of Rule

This Rule applies only to Service Concessions that have a fully executed Amendment to their Concession Agreement referencing this Rule 46 or that have a fully executed Concession Agreement with appropriate language relating to the SPVC Program and this Rule 46.

1.04 Service Concessions

As used in this Rule 46, Service Concessions is defined as a business with a concession agreement that is not conducting business as a restaurant or retail establishment, yet whose core activities and revenues are immediately and materially driven by face to face and/or physical contact or interaction between the staff of the concessionaire and customers and be located in the Jeppesen Terminal and/or Concourses A, B, or C. Examples of services offered in a Service Concession include but are not limited to shoe shine, massage, and money exchange, but does not include businesses that are primarily vending or ground transportation.

1.05 Description of the Services Premium Value Concessions Program

The SPVC Program shall determine which Service Contracts are top performers and provide an objective method for evaluating those eligible to earn the Program Benefit. There are two performance-criteria categories delineated in the SPVC Program: (i) Operations and (ii) Customer Service. Service Contracts that fail to meet the Operations Criteria, described in Section 6.01.01, will not be eligible for the Program Benefit even if they satisfy the remaining criteria. These criteria, as well as the point scoring system, are described in more detail later in this Rule. By incorporating these standards into the SPVC Program, it is the intent of DIA to incentivize Service Concessions to excel at these standards. By keeping each participant apprised of its scores, the SPVC Program offers feedback on performance and therefore an opportunity for improvement.

2. PERFORMANCE CRITERIA

2.01 Criteria

Service Contracts can obtain the Program Benefit based on two Criteria:

- a) Operations
- b) Customer Service performance

These Criteria are described in more detail later in this Rule.

3. ELIGIBLE CONCESSIONS

3.01 Eligible Concession Categories

The SPVC Program and the underlying customer service information used to compare Service Contracts shall be applicable to service concession locations in the Jeppesen Terminal and Concourses A, B, or C that meet the following criteria:

- a) has a concession agreement in effect whose original term was a minimum of 5 years; and either:
 - 1) Concessionaire has a fully executed SPVC Amendment or has a fully executed Concession Agreement with the appropriate inclusion of applicable SPVC Program language and reference to this Rule 46; or
 - 2) is a sub-lessee or sub-licensee of an entity that has entered into an agreement with the Airport to operate, merchandise, sub-license, or sub-lease certain spaces

(“Developer”), and whose sub-lease, sub-license or similar agreement is at least 5 years in length and at minimum coterminous with the City and County of Denver’s (“City”) agreement with the Developer. Eligibility under this Section 3.01 a. is conditioned on Developer issuing a letter to the City, in a form acceptable to the City, allowing its eligible sub-licensees and sub-lessors to participate in the SPVC Program.

4. THIRD PARTY ADMINISTRATOR

DIA will engage the services of an independent Third Party Administrator (“TPA”) to assist with the administrative demands of the SPVC Program and the PVC Program per Rule 45 (“Programs”). The TPA will calculate, record, and report monthly and final scores, and perform other duties outlined below:

- a) implement and manage the Programs;
- b) perform the information gathering, data evaluation, and reporting functions of the Programs;
- c) hire contractors;
- d) issue progress reports based on tallying scoring results;
- e) conduct store surveys;
- f) publish findings and make determinations regarding scoring and granting of the Program Benefit;
- g) interact with DIA information sources, systems, and concessions;
- h) gather information relating to Service Concessions and Service Contracts including but not limited to agreements, compliance, and customer service;
- i) develop information management systems to support the efficient gathering and reporting of information;
- j) sub-contract the customer service secret shopper organization.
- k) Scoring-protests’ process is defined below.

DIA will select and coordinate the TPA. DIA will be the final authority in all scoring methodology determinations and calculation disputes.

5. SCORING PROCEDURES

To obtain the Program Benefit, the Service Contract must pass the Operations Criteria and achieve Customer Service performance distinction. Operations criteria are measured as pass or fail. Customer Service performance is measured by points earned from monthly customer service secret shops.

5.01 Scoring Pool

The SPVC participant's Scoring Pool shall include all eligible Service Contracts which have been open a minimum of 12 full months during the SPVC participant's Operating Period.

6. OPERATIONS

A Service Contract's Operations Criteria, described in the following Section 6.01.01, shall be evaluated during the Operations Evaluation Period. The Operations Evaluation Period is the time period commencing on the latter of the SPVC Program Start Date ("PSD") or contract agreement's Required Opening Date and shall continue through the Service Contract's Operating Period (see Section 8.01). Service Contracts under Phase-In procedures shall use the Operations Criteria defined in Section 9.

6.01 Defaults

Concession Agreement defaults during the Operations Evaluation Period shall be classified as Tier 1 or Tier 2. Defaults shall be limited to terms of the Concession Agreement. To be considered under the below Operations Criteria, the concessionaire must have been formally notified in writing. This default notice shall state the nature of the default and the relevant cure period.

6.01.01 Operations Criteria

Tier 1 defaults are those defaults arising from:

- a) failure to pay rent or percentage rent on or before the due date specified in the Concession Agreement;
- b) failure to timely submit insurance documentation or bonding in the required amounts;
- c) failure to complete any required remodel on or before the deadline specified in the Concession Agreement (subject to extensions granted by the City in writing);
- d) violating the environmental terms of the Concession Agreement;

- e) failure to comply with law within a reasonable time after notice of any alleged violation has been received;
- f) failure to comply with the brand/use term of the Concession Agreement;
- g) failure to transfer ownership in conformity with the Concession Agreement; or
- h) failure to meet ACDBE requirements in the Concession Agreement.

Tier 2 defaults are any other defaults to the Concession Agreement not defined as Tier 1 defaults, including but not limited to:

- a) failure to pay amounts when due (excluding base and percentage rent, which are Tier 1 defaults);
- b) failure to maintain the concession space as required; or
- c) failure to comply with required hours of operation and pricing provisions of the Concession Agreement.

6.02 Total Defaults allowed, cured and uncured

When calculating total defaults cured and uncured defaults shall be counted; however, first notices of default that are cured within the cure period shall not be counted. A Service Contract shall have no more than the following types of defaults during the Operations Evaluation Period:

Tier 1: 0

Tier 2: No greater than 1 per year on average.

If a Service Contract exceeds the total number of defaults allowed, as listed above, that Service Contract shall not be eligible to receive the Program Benefit.

7. CUSTOMER SERVICE PERFORMANCE

Customer Service performance shall be evaluated and scored based on the following classifications: (i) internal, (ii) external, and (iii) when established, training.

Internal scoring shall relate to a Service Contract's monthly customer service secret shopper survey results conducted at DIA. External scoring shall compare those same internal monthly results to customer service survey results conducted at comparable airports. Each month, Service Contracts may score a maximum of one point each, for internal and for external categories. A third customer service category, training, relates to the Service Contract employees meeting attendance standards at a DIA

established Customer Service Training program.

7.01 Secret Shopper

In the event the TPA uses a sub-contractor to perform the secret shopper surveys required for internal and external customer service scoring, the TPA, to the extent reasonable, shall endeavor to ensure that the same subcontractor shall perform the internal and external surveys to ensure consistency of scoring.

7.02 Survey Form

The Service Contract operators, DIA, and TPA shall jointly develop a customer service survey form. DIA shall have final approval of the survey questions. All Service Concessions shall be evaluated with the same survey form. Survey form questions will attempt to best capture the customer service experience.

7.03 Internal Customer Service Scoring

Each month, each Service Contract concession location shall be secret shopped using the approved customer service evaluation form. If a Service Contract has more than one concession location, then an average score for all of the Service Contract's locations will be calculated. Whether a Service Contract has either a single concession location or multiple locations, this Rule will hereafter refer to the Service Contract's monthly scores as "Average Contract Score." Monthly points can be earned as follows:

- A month's Average Contract Score of 95% or greater shall earn a point.
- For months where at least two-thirds (2/3) of a Service Contract's concession locations earn a 100% score, the Service Contract shall receive a ¼ point bonus.
 - The following examples illustrate the number of concession locations, within a single Service Contract, that would need to score 100% in order to earn the ¼ point bonus:
 - One location- Concession location needs to score 100%
 - Two locations- Both concession locations need to score 100%
 - Three locations- Two of the three concession locations need to score 100%

- Four locations- Three of the four concession locations need to score 100%
- Five locations- Four of the five concession locations need to score 100%

The monthly secret shops can occur at any time during the calendar month. Further, if an error or omission in a secret shop is discovered, the TPA will be allowed up to 15 days after the end of a month to complete that month's secret shopping cycle. These additional days, past the end of the calendar month, will only be used to remediate errors or omissions from the prior month.

7.03.01 Temporary Concession Closure

If during a secret shop any of a Service Contract's concession locations are temporarily closed, due to force majeure, refurbish/remodel, or otherwise not available or open during the concession's agreement hours, that concession location will not be secret shopped for that particular month. If any of the Service Contract's concession locations are temporarily closed, the Service Contract will not have an Average Contract Score for that month and its Operating Period Denominator (see Section 8.01) will be reduced by one. Except for airport approved force majeure closures, if there are more than four instances during the Service Contract's Operating Period (see Section 8.01) when there is at least one concession location temporarily closed, for that month, the Average Contract Score shall score 0 (zero) with no further reduction in Operating Period Denominator.

7.04 External Customer Service Scoring

Five competitor United States airports selected by DIA management shall be secret shopped every 18 months using the jointly approved customer service survey form. An average score shall be calculated from all of the competitor airports' secret shopped service concessions ("Average Competitor Airport Score").

Each month, each Service Contract's Average Contract Score shall be compared to the Average Competitor Airport Score. DIA Service Contracts shall earn a point for each month its Average Contract Score is greater than the Average Competitor Airport Score. At the beginning of a new 18 month cycle, if the competitor airports' secret shops have not been completed and/or the new Average Competitor Airport Score is not available, then the calculation and reporting of external scoring shall wait until the new Average Competitor Airport Score has been determined. External scoring shall then be assessed for any and all prior months.

At the onset of this SPVC program, the 18 month cycle will already be in progress from the PVC program's competitor airport shopping. Therefore, the SPVC program's Average Competitor Airport Score will already be determined. Therefore, this initial Average Competitor Airport Score for the SPVC program shall be used for less than 18 months until the new cycle of competitor airport shops occur.

7.05 Training Program Scoring

After DIA establishes a Customer Service Training program, Service Contracts that send at least 80% of their customer-facing employees in a calendar year shall receive a 15% increase to their year-end customer service score. Unless the Service Contract has its Program Benefit determination during the phase-in implementation, the Training increase shall be assessed after the end of the calendar year. For Service Contracts that have Program Benefit determination during the phase-in implementation, during the calendar year of Program Benefit determination, if the Service Contract has sent the requisite number of employees to Training, then the Service Contract shall receive that calendar year's 15% bonus at the time of Program Benefit determination. The phase-in implementation is more fully described in Section 9.

Service Contract operators shall submit a list of employees hired during the year including employee name, position, and badge number. The list of employees shall be sent to the TPA and the TPA shall check the list against applicable security records and other information to validate the information submitted. Failure by the Service Contract operator to submit required employee list within 60 days from the end of the calendar year will result in denial of Training points. Failure of the TPA to dispute the Service Contract operator's list within 60 days of receipt will result in the granting of the 15% Training increase.

8. PROGRAM BENEFIT DETERMINATION

During the Full Phase period, a Service Contract's Program Benefit determination occurs 16 months prior to the Service Contract's expiration date.

8.01 Operating Period/Operating Period Denominator

A Service Contract and its Scoring Pool are evaluated based on performance within the Service Contract's Operating Period. For the Full Phase period, the Operating Period shall be the 36 months when scoring criteria points are accumulated and shall conclude 16 months prior to the Service Contract's expiration date.

For the Full Phase period, the Operating Period Denominator shall be the 36 months when scoring criteria points are accumulated. Thus, the Operating Period Denominator will be less than 36 for any number of months when less than 2/3 of the Service Contract's locations were secret shopped. Except for periods of airport approved force majeure closure, if during the Operating Period there are more than four months when less than 2/3 of the Service Contract's locations were secret shopped, the Operating Period Denominator shall not be reduced to less than 32.

8.02 Program Benefit Scoring Methodology

Monthly points are accumulated at the Service Contract level culminating in its Month Average Point ("MAP"). MAPs shall be calculated as the total Customer Service performance points (including Training) earned during the Service Contract's Operating Period divided by its Operating Period Denominator.

$$\text{MAP} = \text{Total points earned during Operating Period} \div \text{Operating Period Denominator}$$

At the conclusion of the Service Contract's Operating Period and after scoring criteria has been obtained, the TPA shall determine the Service Contract's Program Benefit eligibility.

If the Service Contract fails to meet the Operations Criteria, then it will be Program Benefit ineligible. If the Service Contract passes the Operations Criteria, then the TPA shall calculate its MAP and the MAPs of those Service Contracts in its Scoring Pool. A Service Contract shall earn the Program Benefit if its MAP is within the top third of all Service Contract in its Scoring Pool. A Service Contract will also receive the Program Benefit if:

- its MAP is within 10% of the lowest scoring MAP that is within the top 1/3 of Service Contracts' MAPs and
- its MAP is the closest MAP to the lowest scoring MAP that is within the top 1/3 of Service Contracts' MAPs and
- if there are more than one Service Contract MAPs that have the same MAP, that are the closest MAP to the lowest scoring MAP that is within the top 1/3 of Service Contracts' MAPs, then those Service Contracts shall each earn the Program Benefit.

The following table illustrates Program Benefit eligibility for those Service Contracts that passed the Operations Criteria:

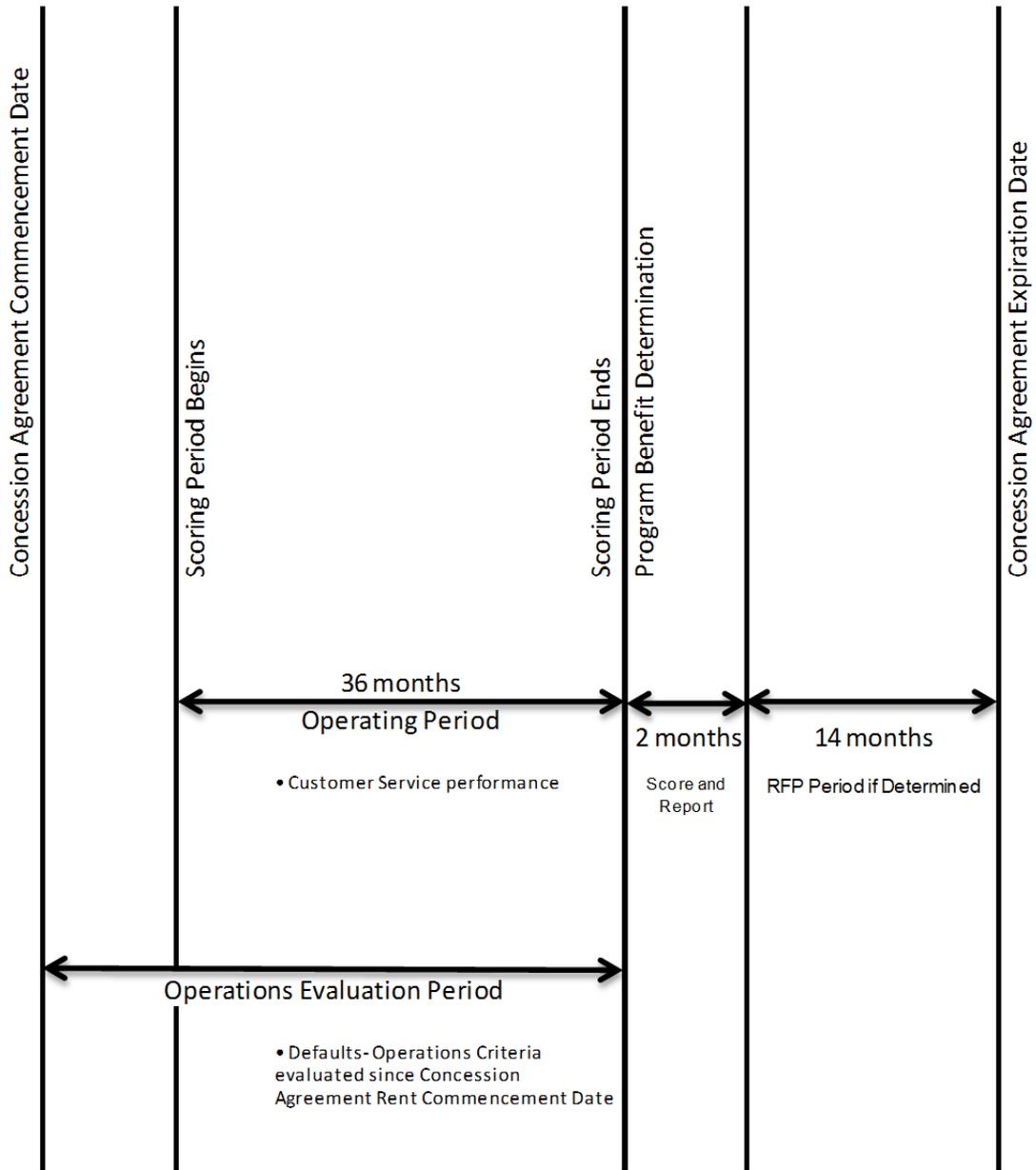
Service Contract	MAP	
Contract A	1.920	<i>Eligible</i>
Contract B	1.830	<i>Eligible</i>
Contract C	1.700	<i>Eligible</i>
Contract D	1.650	
Contract E	1.500	
Contract F	1.400	

- Top 1/3- With six Service Contracts, the top two MAPs would be within the top 1/3. Contract A and Contract B would be Eligible.
- Within 10% of lowest MAP within top 1/3- The 10% threshold would be 1.647 (1.830 * 0.9). Two Service Contracts are within the 10% threshold, Contract C and Contract D. Contract C's MAP is closer to the lowest Eligible MAP. Therefore, Contract C would be Eligible and Contract D would not.
- If Contract C and Contract D had the same MAP and it was at least 1.647, both of these Contracts would be Eligible.

The number of top 1/3 Service Contracts shall not be a rounded-up calculation. That is, the top 1/3 number of Service Contracts shall be calculated by rounding-down to the nearest integer. For example, if there are 5 or 8 or 11 or 14 Service Contracts, the top 1/3 number of Service Contracts shall be 1 or 2 or 3 or 4, respectively.

The TPA will report to DIA whether a Service Contract has achieved the Program Benefit. Upon DIA's approval to proceed, the TPA will notify the Service Contract operator of its determination.

8.03 Program Benefit Determination Timeline



8.04 Program Benefit Scoring Process

The TPA generally will use a process similar to the following:

1. Evaluate whether the Service Contract has satisfied the Operations Criteria. This will involve a review of Service Contract performance with the Airport group(s) responsible for monitoring Concession Agreement compliance. If the Service Contract exceeds the total number of defaults allowed, that Service Contract shall not be eligible to receive the Program Benefit and no scoring calculations per 2 through 5 below will be attempted or provided.
2. Score the Service Contract. Determine the Operating Period. Add the Service Contract points earned during the Operating Period plus any applicable Customer Service Training points. Customer Service Training points will be included in the sum.
3. Calculate Month Average Point or “MAP”. MAPs shall be calculated as the total points earned (including Training points) during the Operating Period divided by the Operating Period Denominator. As of the Service Contract’s Program Benefit determination date, all of the Airport’s eligible Service Contracts’ MAPs will be calculated.
4. Rank the Service Contracts’ MAPs’ results.
5. Program Benefit determination. Using the Program Benefit Scoring Methodology in Section 8.02, the Service Contract will be evaluated for the Program Benefit.
6. The TPA will report to DIA whether the Service Contract has achieved the Program Benefit. Upon DIA’s approval to proceed, the TPA will notify the Service Contract operator of its determination.

9. PHASE-IN IMPLEMENTATION

Because the Customer Service portion of the SPVC Program requires 36 months of evaluation and some Service Contracts may expire prior to the completion of those 36 months, the SPVC Program shall be implemented over different phase-in periods.

The SPVC Program Start Date (“PSD”) shall be the first day of the month in which this Rule 46 has become an official Airport rule and those Service Contracts intending to participate in the SPVC program have fully executed Concession Agreements with the appropriate inclusion of applicable SPVC Program language and reference to this Rule 46.

9.01 Implementation Phases

As described below, “Phase-In” participation in the SPVC Program shall be scored differently than “Full SPVC Program” participation.

9.01.01 Phase 1

The modified criteria under Phase 1 shall be as follows:

- Service Contract expiration date- Applies to Service Contracts in month-to-month status as of the PSD or otherwise have contract expirations prior to the PSD.
- Operations Evaluation Period- Two years prior to the PSD through the date of evaluation by the TPA.
- Operating Period- PSD and continuing for six months

Only Internal Customer Service scoring and External Customer Service scoring shall be performed and evaluated; Customer Service Training will not occur and will not be scored.

9.01.02 Phase 2

The modified criteria under Phase 2 shall be as follows:

- Service Contract expiration date- Applies to Service Contracts with contract expirations after the PSD through 52 months.
- Operations Evaluation Period- PSD through the date of evaluation by the TPA.
- Operating Period- PSD and continuing for 24 months

The Customer Service Training bonus point opportunity shall exist in any year in which there exists at least four months of that calendar year during this Phase 2’s Operating Period. For example, if the PSD is September 1, 2014:

Customer Service Training Phase 2 Example if September 1, 2014 PSD		
Calendar Year	# of Months During Phase’s Operating Period	Bonus Point Opportunity Exists (Yes/No)
2014	4	Yes
2015	12	Yes
2016	8	Yes

9.01.03 **Full Phase**

The criteria under Full Phase shall be as follows:

- Service Contract expiration date- Applies to Service Contracts with contract expirations after 52 months from the PSD.
- Operations Evaluation Period- Latter of PSD or contract agreement's Required Opening Date through the Service Contract's Operating Period.
- Operating Period- The 36 months that are 16 months prior to the Service Contract's expiration.

Full Phase shall fully implement all of the SPVC Program scoring criteria.

10. ACDBE AND OTHER FEDERAL REGULATIONS

The SPVC Program is at all times subject to municipal, state, and federal laws and regulations imposed by governmental entities with jurisdiction, including the federal ACDBE program even if ACDBE participation was not previously required by the Service Contract.

(i) Small and Disadvantaged Business Enterprise Requirements.

The SPVC Program is subject to and the successful Service Contract shall comply with all federal rules and regulations relating to small and disadvantaged business enterprises, including CFR 49 part 23, all applicable provisions of Divisions 1 and 2 of Article VII of Chapter 28 of the City's Revised Municipal Code ("DRMC"), and all applicable Rules and Regulations adopted by Denver's Division of Small Business Opportunity ("DSBO") for Denver's Small and Disadvantaged Business Enterprise Programs.

(ii) ACDBE Participation.

Pursuant to 49 CFR Part 23 and prior to the award of a new agreement to a successful Program Benefit recipient, the DSBO Director may establish ACDBE concession specific goals for the space then occupied by the Service Contract. The Service concessionaire agrees that it shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the concession specific goals for ACDBE participation in the performance of any new agreement awarded pursuant to the SPVC Program. Such good faith efforts may include but are not limited to utilization of certified ACDBE firms as subtenants, joint venture partners, suppliers or service providers as participants in the

performance of any such agreement. Moreover, if in response to the ACDBE goals set by DSBO, the successful Service Contract concessionaire represents that it is a qualified and certified ACDBE, then the successful Service Contract shall remain so throughout the term of any such agreement or obtain DSBO's written waiver of the aforementioned requirement, which shall be based on a finding that the successful Service Contract concessionaire made a good faith effort to meet the ACDBE goals by other allowable means.

11. COST OF THE SERVICES PREMIUM VALUE CONCESSIONS PROGRAM

Service Contract obligations regarding the cost of the SPVC Program are specifically detailed in the applicable Concession Agreements, as amended. SPVC and PVC Program costs as defined herein, are used interchangeably. Any reasonable cost incurred by DIA or its TPA related to the SPVC Program and/or the PVC Program shall be considered a reimbursable cost to administer the SPVC Program ("SPVC Program Costs"). SPVC Program Costs shall include, but not be limited to, TPA contract fees, litigation costs, surveys, evaluations, training programs, and insurance. Other costs related to the SPVC Program shall be borne by the Service Concessionaire requesting such a service.

SPVC Program Costs shall be borne by the Joint Marketing Fund. The TPA shall, no later than 45 days prior to the end of each year, produce an estimated budget of PVC and SPVC Program Costs and a projected number of participants for the following year and submit to the Airport for approval.

12. OWNERSHIP CHANGES

Ownership changes during the Operating Period, if constituting a significant change in control, can cause a loss of benefits under the SPVC Program without relieving the Service Contract of its obligation to pay SPVC Program Costs. Concessions are required to notify the Airport of ownership changes within 15 calendar days of occurrence. Upon notification by the concessionaire of an ownership change and submission of all requested information, the Airport shall determine within 30 calendar days of receipt if the new ownership structure is a significant change in control such that there is a material impact to the assumption that the same factors that determine whether the concession is rewarded under the SPVC Program are still in place (i.e. Operations and Customer Service). The Airport shall notify the TPA of any applicable ownership changes.

A. **Not Significant**: If the Airport determines the change is not significant, the new entity shall be evaluated for receipt of Program Benefit as if no change had occurred between it and the prior entity. The new entity shall inherit the Operations Criteria performance and all earned and accumulated Customer Service performance points of the prior entity.

B. **Significant**: A significant change in control shall result in the loss of any points earned by the Concession up to the point of the change in control under the Customer Service criteria. The new entity shall inherit the Operations Criteria performance of the prior entity.

In the event the Concession fails to provide requested documents in a timely manner, the change in control shall be determined significant.

Acceptance by the Airport of any assignment of a Concession Agreement from one owner to another in accordance with the terms of the Concession Agreement does not constitute an evaluation of Ownership change required in the SPVC Program.

13. NO LIABILITY/HOLD HARMLESS

Concessionaires participating in the SPVC Program shall hold harmless DIA, the City, and its employees, agents, and contractors for any and all actions related to the administration and implementation of the SPVC Program under this Rule 46 and as more specifically described and agreed to in the Concession Agreement, as amended.

14. PROTESTS

If a Service concessionaire believes a scoring error occurred or inaccuracy exists, it may protest the alleged error or inaccuracy. A scoring error or inaccuracy is defined as a mathematically incorrect result from a failure to correctly perform mathematical operations, incorrect input of scores into the scoring calculation, transposing numbers, etc. It does not refer to Customer Service scoring of a concession or an airport. All alleged scoring errors or inaccuracies must be identified in writing and received by the TPA within 60 days after their initial reporting. In this protest, the Service concessionaire must document the alleged scoring error or inaccuracy claim so that the TPA can either correct the scoring or affirm the correctness of the scoring.

No other protests or appeals are available for failure to obtain the Program Benefit.

15. AIRPORT HAS RIGHT TO TERMINATE SPVC PROGRAM

DIA may terminate the SPVC Program at any time. Reasonable program termination expenses may be incurred and shall be SPVC program expenses. These expenses may include, but are not limited to, any cost to terminate the TPA, or transportation or transfer of records related to the PVC Program. Should program expenses exceed the unexpended funds, then DIA shall bill participating Service concessionaires their prorated share of those costs. SPVC Program Costs shall be paid from the Joint Marketing Fund and there will be no reimbursement to concessionaires participating in the SPVC Program.

16. CHANGE IN CATEGORY

If DIA determines, in accordance with the Airport's Merchandise Guidance, that a location occupied by a Service Concession that has achieved the Program Benefit in one merchandise category is more appropriate for a different merchandise category, DIA shall notify that particular Service Concessionaire that its location will be changed. Recognizing that it is in DIA's best interest to find a suitable alternative location for the Service Concession, DIA shall make reasonable, diligent efforts to find an alternative location and offer that alternative location to the Service Concessionaire. If the Service Concessionaire rejects the first alternative location, DIA shall work with the Service Concessionaire to find a mutually agreeable alternative location. However, if a mutually agreeable alternative location cannot be found within 60 calendar days of presentation of the first alternative location, then on the 60th calendar day either party may extend the deadline by another 60 calendar days to attempt to find a mutually agreeable alternative location. Should the parties fail to mutually agree on an alternative location during that period, then upon both parties' agreement on the 60th calendar day, the deadline may be extended an additional 60 calendar days. Upon the expiration of the final 60 calendar day period, DIA may reevaluate its Merchandise Guidance and opt to grant the Program Benefit to the Service Concession in its current location, or terminate the Service Contract's participation in the SPVC Program for that particular concession location, which includes eligibility for Program Benefit.

17. CONCESSION AGREEMENT

Any Concession Agreement issued as a result of a Service Contract obtaining the Program Benefit shall be in accordance with the terms required under the Airport's policies then in effect for Concession Agreements within the Service Contract's major merchandise category. Typically, these policies may include but not be limited to capital investment, length of term, percentage rent, surety requirements, common use services, and standard concession agreement form.