

**SECOND AMENDMENT TO THE AGREEMENT**

**THIS SECOND AMENDMENT TO THE AGREEMENT**, is entered into as of the date indicated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (the “City”), Party of the First Part, and **ALCLEAR LLC** (d/b/a CLEAR) a limited liability company authorized to conduct business in the State of Colorado (“Clear”), Party of the Second Part.

**WITNESSETH:**

**WHEREAS**, the City owns and operates Denver International Airport (“DEN” or the “Airport”); and

**WHEREAS**, the City and Clear entered into a written Agreement # 201208853 dated January 23, 2013 (“Agreement”) wherein Clear agreed to provide a Trusted Traveler Program; and

**WHEREAS**, Clear has been a leader in the Trusted Traveler Program for over ten years; and

**WHEREAS**, Clear and the City have worked collaboratively throughout the years to find innovations in aviation security; and

**WHEREAS**, the City now restates and clarifies certain provisions of the Agreement along with adding additional term to the Agreement with this First Amendment; and

**WHEREAS**, Clear is willing and able to perform the Work;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the parties hereto agree as follows:

1. Section 3.01 Term, is hereby deleted in its entirety and replaced with the following.

**3.01 TERM**

The term of this Contract shall commence on January 29, 2013 and shall terminate Midnight January 28, 2024, unless terminated earlier in accordance with this Contract. It is also a specific provision of this Contract that the Manager in his or her sole discretion (or his or her designee) may renew and continue the Contract under the same terms and conditions as the original contract for two additional 5 year terms. In addition, the term of this Contract may be extended in the Manager’s discretion, by written notice from the City to the Clear, to allow the completion of any work which has been commenced prior to the date upon which this Agreement otherwise would terminate.

2. Section 4.01(d), is hereby deleted in its entirety and replaced with the following.

d) Potential Future Revenue: The parties agree that there may be potential for future sources of additional innovation and revenue not contemplated by this Agreement. Alclear agrees that in the event that Alclear is able to generate additional revenue derived, directly or indirectly, from any Customers, registered through the Trusted Traveler program or similar program, the parties will work to establish a revenue sharing model similar to the Local Adjusted Revenue and/or National Revenue Share models described herein (as is applicable based on the Enrollment Residence of such customers). Possible future innovation and revenue opportunities include, but are not limited to, sale of wholesale seat licenses to Federal Government entities that result in additional use of the Trusted Traveler program at DIA, or interoperability “tolling” fees derived from expansion of the Trusted Traveler program to other airports by other providers, or other security related innovations which are similar to the current scope of the Agreement. If the City determines that it is in the Airports best interest to move forward with new innovations or revenue opportunities not contemplated by the Agreement, the scope of the project must be documented in a separate written task order (the “Task Order”) and agreed to in writing by the Parties. The Task Order shall document all potential intellectual property rights for projects that the Parties agree in writing will incorporate jointly developed technologies; funding mechanisms including but not limited to capital contributions, reputation and goodwill; and any revenue share percentages applicable to the project.

3. Section 4.07(G), Bookkeeping System, 4.07(H), Financial Accountability, 4.07(I), Audit of Records, 4.07(J) Audit Request, 4.07(K) Contractor to pay for Revenue Audits, 4.07(L) Understated Revenues, 4.07(M) Audit Delays, and 4.07(N) Time for Performing an Audit is hereby deleted in its entirety and replaced with the following.

**G. *Bookkeeping System.*** Clear agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Such system shall be kept in a manner that distinguishes each location that is operated by Clear from all other locations operated by Clear.

**H. *Records Maintenance*** - Clear shall maintain, in accordance with GAAP, accurate books and records in connection with the business conducted by Clear hereunder. Clear shall retain such books and records for a period in accordance with this Agreement and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City’s Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Receipts, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the “Financial Records”).

**J. Examination of Records.** Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Clear (together with the Financial Records, the “Records”), involving transactions related to this Agreement until the later of three (3) years after the final payment under this Agreement or expiration of any applicable statute of limitations. Clear shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Clear may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Clear as appropriate.

**K. Audit Deficiencies.** If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Clear shall pay the amount of the deficiency plus interest at 2% per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than 1%, Clear shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Clear.

**L. Inspection of Records.** Clear agrees that the City, and any of the City’s agents including the City’s Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Clear with the City’s Manager of Finance and any related reports, document, data or other information generated by the City’s Manager of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Clear by the City’s Department of Finance. Clear authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City’s Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

**M. Required Onsite Records.** Clear shall keep within the City and County of Denver proper, adequate, and accurate accounting books and records prepared in accordance with a bookkeeping system approved in writing by the City documenting all business and transactions engaged in by Clear pursuant to this Agreement. Such onsite books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and copies of all business tax returns filed with the State of Colorado and all federal income tax returns.

**N. Cash Registers and Inventory Sheets.** At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Receipts from that

location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Receipts. Clear shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; and these documents are subject to audit by the City in accordance with this Agreement.

4. Section 11.25, Colorado Open Records Act, is hereby deleted in its entirety and replaced with the following.

#### 11.25 COLORADO OPEN RECORDS ACT

Contractor acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“CORA”), C.R.S. §§ 24-72-201 et seq., and Contractor agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any records or information which Contractor asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all records, and information provided by Contractor to the City shall be considered confidential or otherwise protected by the City only to the extent provided in CORA, and Contractor agrees that any disclosure by the City consistent with the provisions of CORA shall result in no liability of the City. The City shall make the final determination regarding whether to withhold or produce information the Contractor believes to be confidential or otherwise protected, other than Sensitive Security Information subject to the U.S. Transportation Security Administration oversight and other than those materials submitted to a Court for adjudication. The Contractor shall mark any documents it believes to be confidential or otherwise protected as such at the time these documents are submitted to the City.

In the event of a request to the City for disclosure of any records or information which the Contractor has marked as confidential, time and circumstances permitting, the City will advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of material the Contractor may consider confidential, proprietary or otherwise exempt from disclosure. Any objection to the release of documents marked as confidential must be provided to the City within the time frames allowed under the Colorado Open Records Act and as directed by the City. In the event of the filing of a lawsuit to compel disclosure, the City will tender all disputed material to the court for judicial determination of the issue of disclosure and the Contractor agrees it will either intervene in such lawsuit to protect materials the Contractor does not wish disclosed, or waive any claim of privilege or confidentiality. If the Contractor chooses to intervene in such a lawsuit and oppose disclosure of any materials, the Contractor agrees to defend, indemnify, and save and hold harmless the City, its officers, agents, and employees, from any claim, damages, expense, loss or costs arising out of the Contractor’s intervention including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

5. The Summary Page, which is attached hereto as Exhibit A, replaces the Summary Page which is found in the Agreement.

6. Except as modified by this Second Amendment, all terms and conditions of

the Agreement shall remain in full force and effect.

7. This Second Amendment to the Agreement shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

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BLANK]**

**Contract Control Number:** PLANE 202056801-02/Alfresco 201208853-02  
**Contractor Name:** ALCLEAR, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

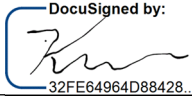
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PLANE 202056801-02/Alfresco 201208853-02  
ALCLEAR, LLC

By:  \_\_\_\_\_  
32FE64964D88428...

Name: Ken Cornick  
(please print)

Title: President  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

<b>Exhibit A</b>
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**STANDARD AGREEMENT DENVER  
INTERNATIONAL AIRPORT  
SUMMARY PAGE ALCLEAR, LLC**

This Summary Page, consisting of two pages, is attached to and made a part of that certain Agreement made and entered into as of the date stated on the signature page, between the City and County of Denver and the Clear listed below.

<b>TENANT: Name</b>	<u>ALCLEAR LLC</u>
Address	<u>65 E 55<sup>th</sup> St,</u>
City, State and Zip	<u>New York, NY 10022</u>
Attn:	<u>Ken Cornick</u>
Trade Name	<u>Clear State</u>
of Incorporation	<u>New York</u>
<b>AGREEMENT NAME</b>	<u>Office Space Lease</u>
<b>AGREEMENT NUMBER</b>	<u>201208956</u>

<b>OFFICE LOCATION and COMPENSATION (Initial)</b>						
<b>Loca. Num.</b>	<b>Concourse /Terminal</b>	<b>Address</b>	<b>Square Feet</b>	<b>Initial MAG</b>	<b>Initial Monthly MAG</b>	<b>Minimum Investment PSF</b>
	Main Terminal	See Exhibit A and Exhibit B		\$250,000.00	\$20,833.33	\$NA

**PERCENTAGE RENT:** of Gross Revenues as defined in Section 5.02

**INTERIM RENT AMOUNT:** \$ (based on projected annual sales) \_\_\_\_\_

**PERFORMANCE SURETY AMOUNT:** \$40,000.00 or as provided in Section 9.03

11 years with two 5 year options

**TERM:**

Effective Date:	<u>Date of Execution</u>
Expiration Date:	<u>11 years from the Date of Execution, which is January 28, 2024 or January 28, 2034 (if the both 5 year options are taken)</u>



**PERMITTED USE:** Operation of a high-quality Service at DIA, offering for sale the following Products: Provide expedited security screening services at security checkpoints and as approved by the City.

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Major Concession Category Service

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Minor Concession Category Service

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Brand(s) Clear

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**HOURS OF OPERATION:** See **Exhibit A Scope of Work**

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**TARGET POSSESSION DATE:** Estimated to be January 29, 2013

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**REQUIRED OPENING DATE:** January 29, 2013

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**RENT COMMENCEMENT DATE:** January 29, 2013

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**INSURANCE POLICY AMOUNTS:**

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Comprehensive General Liability: See Exhibit C

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Automobile/Delivery Vehicle Liability: See Exhibit C

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Workers Compensation: Statutory Requirements

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**ACDBE GOAL:** 0%

**DESCRIPTION OF EXHIBITS AND ADDENDA:**

Exhibit A	Scope of Work
Exhibit B	Space Exhibit
Exhibit C	Insurance Certificate
Exhibit L	Monthly Revenue Report
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination