

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this “Agreement”) is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **FLOCK GROUP INC**, a Delaware corporation, whose address is 1170 Howell Mill Rd NW Ste 210, Atlanta, GA 30318-8637 (the “Contractor”), collectively, the “Parties” and individually a “Party.”

RECITALS

WHEREAS, the Parties agree to enter into a confidential relationship with respect to the disclosure by one Party (the “Disclosing Party”) to the other (the “Receiving Party”) of certain proprietary, confidential, and/or trade secret information (“Confidential Information”) to facilitate current and future transactions between the Parties;

WHEREAS, each Party hereto is willing to disclose such confidential, proprietary, and/or trade secret information to the other Party in accordance with the terms and conditions of this Agreement and for no other purpose.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

1. **DEFINITION OF CONFIDENTIAL INFORMATION**: For purposes of this Agreement, “Confidential Information” means all information or materials of a confidential, secret, or proprietary nature disclosed by or on behalf of the Disclosing Party to the Receiving Party on or after the Effective Date, either directly or indirectly, in writing, orally, or by inspection of tangible objects that has or could have commercial value or other utility in the business or public purpose in which the Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials to identify its confidential nature. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information. The Receiving Party’s obligations under this Agreement do not extend to information that is: (i) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (ii) discovered, known, or created by the Receiving Party before disclosure by Disclosing Party; (iii) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party’s representatives; (iv) is disclosed by Receiving Party with Disclosing Party’s prior written approval.

2. **DISCLOSURE AND STANDARD OF CARE**

- 2.1. Each Party hereto shall take reasonable and necessary measures to preserve the secrecy and confidentiality and avoid the unauthorized use or disclosure of the other Party’s Confidential Information, including, without limitation, using, at minimum, the same degree of care it takes to protect its own Confidential Information. The Parties shall limit access to the other Party’s Confidential Information to those of its employees, agents, advisors, and consultants, who have a reasonable need for access to Confidential Information in connection with this Agreement and shall be subject to the non-disclosure covenants substantially similar to those contained herein.
- 2.2. Confidential Information shall not be used by the Parties, directly or indirectly, except with the prior written consent of the other Party, for any purpose other than the purposes set forth herein. Each Party's consent may be withheld at its discretion and may be granted with additional terms and conditions agreed upon in writing.
- 2.3. The Receiving Party acknowledges and agrees that nothing contained in this Agreement shall be construed as granting, expressly or by implication, to the Receiving Party any right, license, or ownership to Confidential Information or its inventions, patent rights, copyrights, trademarks, or other intellectual property rights of the Disclosing Party. Nothing in this Agreement grants the Receiving Party the right to retain, distribute, or commercialize any Confidential Information or to use it in any manner other than as expressly permitted.
- 2.4. The Disclosing Party may at any time cease to make further disclosure of its Confidential Information, and the Receiving Party may refuse to accept further disclosure of the Disclosing Party’s Confidential Information. Nothing in this Agreement shall obligate either Party to negotiate or proceed with any transaction between them, and each Party reserves the right, in such Party’s sole discretion, to terminate the discussions contemplated by this Agreement.
- 2.5. The Receiving Party shall immediately notify the Disclosing Party in the event of any loss, unauthorized disclosure, or unauthorized use of, or any inability to account for, any Confidential Information of the Disclosing Party.

3. **TERM, TERMINATION, AND DUTY TO RETURN:** This Agreement will commence on July 1, 2023 (the “Effective Date”), and will expire, unless sooner terminated, on July 1, 2026 (the “Term”). Either Party may earlier terminate this Agreement upon thirty (30) days prior written notice at any time, with or without cause. Upon written request at any time by the Disclosing Party, whether prior to or following expiration or earlier termination of this Agreement, the Receiving Party shall promptly return all Confidential Information and all copies thereof, in whatever form, or destroy them, except to the specific extent retention of such Confidential Information is required by law or regulation. The obligations of the Receiving Party under this Agreement regarding non-disclosure and restrictions on use of Confidential Information disclosed prior to such termination shall not be altered by any such termination and shall continue in effect for the earlier of (i) a period ending five (5) years after such expiration or termination, or (ii) for as long as the Confidential Information disclosed remains strictly confidential.
4. **NO CITY FUNDS:** Each Party will bear its own costs and expenses to undertake the responsibilities and actions set forth herein. The City does not pledge present cash reserves for payments in future fiscal years. This Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City and does not require an expenditure of City funds. Notwithstanding anything to the contrary, the City’s maximum payment obligation under this Agreement will not exceed Zero Dollars (\$0.00).
5. **NO WARRANTIES:** All Confidential Information is provided “as is.” Neither Party makes any warranties, express, implied, or otherwise to the other Party regarding the accuracy, completeness, or performance of any Confidential Information disclosed under this Agreement except that it has the right to disclose such Confidential Information.
6. **COLORADO OPEN RECORDS ACT:** Notwithstanding anything to the contrary contained herein, nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (“CORA”). In the event of a request to the City for disclosure of confidential materials, the City shall advise the Contractor of such request to give the Contractor the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Contractor objects to disclosure of any of its material, the Contractor shall identify to the City the legal basis under CORA for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Contractor agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Contractor further 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 to protect and assert its claim of privilege against disclosure under this Section, 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.
7. **NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
8. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, electronic mail, or mailed via United States mail, postage prepaid, if to the Contractor at the address above and to City at: Chief Information Officer, Denver Technology Services, 201 West Colfax Avenue, Dept. 301, Denver, Colorado 80202; with a copy to: Denver City Attorney’s Office, 1437 Bannock St., Room 353, Denver, Colorado 80202. Notices hand delivered, sent by electronic mail, or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.
9. **COMPLIANCE WITH ALL LAWS:** The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver. These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

- 10. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
- 11. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.
- 12. LEGAL AUTHORITY:** The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by the Contractor to execute the Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into the Agreement.
- 13. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing as agreed to by the Parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
- 14. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number: TECHS-202368621-00
Contractor Name: Flock Group Inc

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of: 6/14/2023 | 7:05 AM PDT

SEAL



CITY AND COUNTY OF DENVER:

ATTEST:

DocuSigned by:
Audrey Kline
E0F80F841070488...
Deputy Clerk and Recorder
Audrey Kline

By: DocuSigned by:
Laura E. Aldrete
430BB746635A4FD...
Deputy Mayor
Laura E. Aldrete

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: DocuSigned by:
Andrew Riester
7E488E7800000450...
Assistant City Attorney
Andrew Riester

REGISTERED AND COUNTERSIGNED:

By: DocuSigned by:
Margaret Danuser
F121DA102D22403...
Chief Financial officer
Margaret Danuser

By: DocuSigned by:
Timothy O'Brien
0209594F0B7045D...
Auditor
Timothy O'Brien

Contract Control Number: TECHS-202368621-00
Contractor Name: Flock Group Inc

By:

DocuSigned by:

Mark Smith

AG5G931454G24F3...

Name: Mark Smith
(please print)

Title: General Counsel
(please print)

ATTEST: [if required]

By:

Name:
(please print)

Title:
(please print)