

**FLOCK GROUP INC.**  
**SERVICES AGREEMENT**  
**ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. ("**Flock**") and the customer identified below ("**Agency**") (each of Flock and Customer, a "**Party**"). This order form ("**Order Form**") hereby incorporates and includes the "GOVERNMENT AGENCY AGREEMENT" attached (the "**Terms**") which describe and set forth the general legal terms governing the relationship (collectively, the "**Agreement**"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the "**Effective Date**").

<b>Agency:</b> CA - Anaheim PD/City of Anaheim  <b>Legal Entity Name:</b>	<b>Contact Name:</b> Kerrstyn Vega
<b>Address:</b> 425 S Harbor Blvd Anaheim, California 92801	<b>Phone:</b> (714) 765-1900 <b>E-Mail:</b> kvega@anaheim.net
<b>Expected Payment Method:</b>	<b>Billing Contact:</b>  (if different than above)

<b>Term:</b> 12 months	<b>Billing Term:</b> Annual payment due Net 30 per terms and conditions
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<b>Name</b>	<b>Price</b>	<b>QTY</b>	<b>Subtotal</b>
Flock Falcon Camera	\$2,500.00	10.00	\$25,000.00
Implementation Fee	\$250.00	10.00	\$2,500.00

**(Includes one-time fees)**

Total \$27,500.00

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Agency: CA - Anaheim PD/City of Anaheim

By: 

Name: MARK SMITH

Title: GENERAL COUNSEL

Date: 27 JUNE 2022

By: 

Name: Jim Vanderpool

Title: City Manager

Date: 7/8/22

APPROVED AS TO FORM:  
ANAHEIM CITY ATTORNEY'S OFFICE

BY: 



ATTEST:

By: 

Theresa Bass  
City Clerk

7/14/22

# flock safety

## GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the order form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

### RECITALS

**WHEREAS**, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, image, and recordings data of suspected vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

**WHEREAS**, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

**WHEREAS**, Flock deletes all Footage on a rolling thirty (30) day basis, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

**WHEREAS**, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the

awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“Purpose”).

## **AGREEMENT**

**NOW, THEREFORE,** Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

### **1. DEFINITIONS**

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “***Agency Data***” will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. “***Agency Hardware***” shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “***Agency Hardware***” excludes the Embedded Software

1.3 “***Authorized End User(s)***” shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 “***Documentation***” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 “***Embedded Software***” will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 “***Flock IP***” will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 “***Footage***” means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 “***Hardware***” or “***Flock Hardware***” shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term “***Hardware***” excludes the Embedded Software.

1.9 “***Implementation Fee(s)***” means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 “***Installation Services***” means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 “***Non-Agency End User(s)***” shall mean any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.12 “***Services***” or “***Flock Services***” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.

1.13 “**Support Services**” shall mean Monitoring Services, as defined in Section 2.9 below.

1.14 “**Unit(s)**” shall mean the Agency Hardware together with the Embedded Software.

1.15 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.16 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

## **2. SERVICES AND SUPPORT**

**2.1 Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the order form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall require Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using

a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. Warranties provided by said third party service providers are the agency's sole and exclusive remedy and Flock's sole and exclusive liability with regard to such third-party services, including without limitation hosting the web interface. Notwithstanding the foregoing, Flock agrees to extend the contract period set forth in this Agreement free to charge for any time period that the services provided by third party service providers are non-operational or unavailable to Agency. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

**2.2 Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

**2.3 Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency's in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

#### **2.4 Usage Restrictions.**

**a. Flock IP.** The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture ("***Permitted Purpose***"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or



apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

**b. Flock Hardware.** Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.4(b), all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

**2.5 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock

retains the right to use the foregoing for any purpose in Flock's sole discretion.

There are no implied rights.

**2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Hardware if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "***Service Suspension***"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted.

## **2.7 Installation Services.**

**2.7.1 *Designated Locations.*** For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock will consider input from Agency regarding location, position and angle of the Units (each Unit location so designated by Agency, a “***Designated Location***”). Flock shall have final discretion on location of Units. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency’s delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. The deployment plan will confirm the Designated Location. After installation, any subsequent changes to the deployment plan (“***Reinstalls***”) will incur a charge for Flock’s then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have full discretion on decision to reinstall Flock Hardware.

**2.7.2 *Agency Installation Obligations.*** Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although the Units are designed to utilize solar power, certain Designated Locations may require a reliable source of 120V AC power, as described in the deployment plan. In the event adequate solar exposure is not available Agency is solely responsible for providing a reliable source of 120V AC power to the Units,

if necessary. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, ]State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency (“***Agency Installation Obligations***”). In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

**2.7.3 Flock's Obligations.** Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation

procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

*2.7.4 Security Interest.* Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

**2.8 Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

**2.9 Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations (“**Monitoring Services**”). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services (“**On-Site Services**”) in-person or by email at [support@flocksafety.com](mailto:support@flocksafety.com). Flock will use commercially reasonable efforts to respond to requests for support.

**2.10 Special Terms.** From time to time, Flock may offer certain “Special Terms” related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency’s consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**2.11 Changes to Platform.** Flock may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock’s products or services to its Agency s, (b) the competitive strength of, or market for, Flock’s products or services, (c) such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law.

### **3. RESTRICTIONS AND RESPONSIBILITIES**

**3.1 Agency Obligations.** Flock will assist Agency end-users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person’s name with the intent to impersonate that person. Agency may not transfer its account to anyone else

without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

**3.2 Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency 's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

#### **4. CONFIDENTIALITY; AGENCY DATA**

**4.1 Confidentiality.** To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the “*Receiving Party*”) understands that the other Party (the “*Disclosing Party*”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “*Proprietary Information*” of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services,

which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("*Agency Data*"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) constitutes a public record under FOIA or the California Public Records Act. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive,



worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

**4.2 Agency Data..** As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data as a part of the Aggregated Data (as defined in Section 4.4 below).As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

**4.3 Feedback.** If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**4.4 Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data input into the Services (the “*Aggregated Data*”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein. Flock shall not sell Agency Data or Aggregated Data.

## **5. PAYMENT OF FEES**

**5.1 Falcon Fees.** For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form attached hereto, together the “Initial Fees”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 30<sup>th</sup> day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30<sup>th</sup> day following receipt

of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30<sup>th</sup> day following receipt of invoice.

**5.2 Changes to Fees.** Flock reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock's Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

**5.3 Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after receipt of the invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.

## **6. TERM AND TERMINATION**

**6.1 Falcon Term.** Subject to earlier termination as provided below, the term of this Agreement shall be for the period of time set forth on the Order Form (the "**Term**"). The Term shall commence upon first installation and validation of a Unit. **6.2 Termination for Convenience.** At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-

time fee of \$500 per Flock Hardware. Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination.

**6.3 Termination.** Notwithstanding the termination provisions in Section 2.4(b), in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

**6.4 Survival.** The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 7.4, 8.1, 8.2, 9.1 and 10.5.

## **7. REMEDY; WARRANTY AND DISCLAIMER**

**7.1 Remedy.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "*Defect*"), Agency must notify Flock's technical support as described in Section 2.9 above. If Flock is unable to correct the Defect, Flock shall, or shall

instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Agency may request that Flock replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Hardware.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 if Agency is found to have misused the Flock Hardware, Agency Hardware or Embedded Software in any manner.

**7.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**7.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY 'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE OF CALIFORNIA.

**7.5 Insurance.**

Without limiting ANAHEIM'S right to indemnification, it is agreed that CONSULTANT shall secure, prior to commencing any activities under this Agreement, and maintain, during the term of this Agreement, insurance coverage as follows:

**Workers 'Compensation Insurance** as required by California law and Employers Liability Insurance in an amount not less than \$1,000,000 per occurrence

**Commercial General Liability Insurance**, including coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products/Completed Operations Liability, Sexual Abuse and Molestation and Independent CONSULTANT'S Liability, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 annual aggregate, written on an occurrence form. Such insurance shall be written on a primary basis, but may include a deductible or Self-Insured Retention (SIR) greater than \$10,000 per occurrence, provided that such deductible or SIR is disclosed to Agency and submitted for approval by Agency's Risk Manager prior to the inception of the final Agreement.

**Comprehensive Automobile Liability Coverage** including—as applicable—owned, non-owned, and hired autos, in an amount not less than \$1,000,000 per occurrence, combined single limit, as required by California law.

**Professional Liability Insurance, inclusive of Cyber liability,** in an amount not less than \$1,000,000 per occurrence, and CONSULTANT shall maintain such coverage for at least one (1) year from the termination of this Agreement. Such insurance shall be written on a primary basis, but may include a deductible or Self-Insured Retention (SIR) greater than \$10,000 per occurrence, provided that such deductible or SIR is disclosed to Agency and submitted for approval by Agency's Risk Manager prior to the inception of the final Agreement.

Each insurance policy required by this Agreement shall contain the following clause or shall otherwise provide for the following condition:

This insurance shall not be cancelled, or limited in scope or coverage, until after thirty (30) days prior written notice has been given to the City Clerk, City of Anaheim, 200 S. Anaheim Blvd., Anaheim, CA 92805, except in the event of cancellation for non-payment of premium that shall provide for not less than ten (10) days 'notice.'

Each insurance policy required by this Agreement, except policies for Professional Liability and Workers' Compensation, shall contain the following clauses or shall otherwise provide for the following conditions:

"It is agreed that any insurance maintained by CONSULTANT pursuant to this Agreement shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City of Anaheim."

"The City of Anaheim, its officers, agents, employees, representatives and ANAHEIM- designated volunteers are added as additional insured as respects the acts, omissions, operations and activities of, or on behalf of, the named insured, in regard to products supplied to, or work or services performed for, or related to, the City of Anaheim."

Prior to commencing any work under this Agreement, CONSULTANT shall deliver to ANAHEIM insurance certificates confirming the existence of the insurance required under this Agreement, and including the applicable clauses referenced above. Also, within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide ANAHEIM (i) endorsements to the insurance policies that add to these policies the applicable clauses referenced above, or (ii) in lieu of said endorsements, documentation acceptable to ANAHEIM evidencing that the coverage, terms, and conditions set forth in the above-referenced clauses are otherwise included in said insurance policies. Insurance required hereunder shall be placed with insurers (i) admitted to write insurance in California, (ii) possessing an *A. M. Best's* rating of A VII or higher, or (iii) otherwise acceptable to ANAHEIM, with prior written permission from ANAHEIM. In the event that a claim or other legal action is filed against ANAHEIM, and if ANAHEIM, in its good faith opinion, believes it may have coverage under any of the insurance required herein, then ANAHEIM has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance; provided, however, that this provision shall not apply if the parties agree that CONSULTANT shall fully defend, hold harmless, and indemnify ANAHEIM against any such claim or other legal action.

In addition to other remedies ANAHEIM may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, ANAHEIM may, at its sole option:

Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) that become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

Terminate this Agreement.



Exercise of any of the above remedies, however, is an alternative to other remedies ANAHEIM may have and is not the exclusive remedy for CONSULTANT'S failure to maintain insurance or secure appropriate endorsement.

Nothing herein contained shall be construed in any way as limiting the extent that an CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT'S, (or CONSULTANT'S AGENT or SUB-AGENT, if any) performance of the work covered under this Agreement.

In the event CONSULTANT hires other persons or firms to perform some of the work related to this Agreement, CONSULTANT shall ensure (i) that the acts or omissions of such persons or firms are covered under the above-referenced liability insurance, or (ii) that such firms maintain insurance equal to or better than, and subject to the same limits, terms and conditions as, the insurance required of CONSULTANT under this Agreement (except for firms that are not performing professional services—such firms shall not be required to carry the above-referenced professional liability insurance); and in either instance, CONSULTANT shall provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to ANAHEIM.

ANAHEIM'S Risk Manager is hereby authorized to amend the requirements set forth herein in the event that such reduction is in ANAHEIM'S best interest.

**7.6 Force Majeure.** Flock is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User. However, any such delay or failure will extend the term of

the Agreement in an amount of time equal to the delay or failure, unless otherwise agreed to by the parties.

## **8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY**

**8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (C) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (D) FOR CRIME PREVENTION. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.5,

**8.2 Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties.

As respects acts, errors or omissions in the performance of professional services, CONSULTANT agrees to indemnify and hold harmless ANAHEIM, its officials, officers, and employees from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature, arising directly out of the negligent acts, errors or omissions of the CONSULTANT or any SUB-AGENT in the performance of professional services under this Agreement.

As respects all acts, errors or omissions that do not arise directly out of the performance of professional services, including but not limited to those acts, errors or omissions typically covered by general and automobile liability insurance, CONSULTANT agrees to indemnify, defend (at ANAHEIM'S option), and hold harmless ANAHEIM, its officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), arising out of or in connection with CONSULTANT'S (or CONSULTANT'S AGENT or SUB-AGENT, if any) acts, errors, omissions, or work, relative to this Agreement; except for those Claims that arise out of the sole negligence or willful misconduct of ANAHEIM.

The obligations set forth in this indemnification provision (i) shall be in effect without regard to whether or not ANAHEIM, CONSULTANT, or any other person maintains, or fails to maintain, insurance coverage, or a self-insurance program, for any such Claims; and (ii) shall survive the termination of this Agreement.

## **9. RECORD RETENTION**

**9.1 Data Preservation.** Agency agrees to store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to preserve the Agency Data, Flock will notify Agency of the requirement and applicable retention period, and Agency

agrees to preserve and securely store this data on Flock's behalf so that should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

## **10. MISCELLANEOUS**

**10.1 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**10.2 Assignment.** This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

**10.3 Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

**10.4 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

**10.5 Governing Law; Venue.** This Agreement shall be governed by the laws of the State in which the Agency is located. The parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located.

The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**10.6 Publicity.** Upon prior written consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

**10.7 Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**10.8 Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

**10.09 Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

**10.10 Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.



Agreement No. \_\_\_\_\_

**City of Anaheim**  
**Agreement Summary Sheet for Agreements Executed by the City Manager**  
**and Request for Sole Source Waiver**

The City Manager is authorized by the City Council (April 27, 2021) to execute, ratify and amend contracts and agreements where the compensation payable under the contract does not exceed \$200,000. If the compensation payable under an agreement exceeds \$200,000, it shall be placed on the City Council agenda for approval. If the combined fees payable to a consultant under multiple contracts exceed \$500,000 during any five (5) year period, the contract will be placed on the City Council agenda for approval.

The City Manager's Authority to enter into agreements where the consultant is selected without receiving multiple proposals is up to \$50,000. Any agreement valued at over \$50,000 that did not solicit multiple proposals must be approved by the City Council.

From: Police  
Department

  
Director's Signature

Contract Administrator: Kerrstyn Vega  
Name

714-765-1445  
Phone Number

Name of Contractor: Flock Group, Inc.

Description of services to be provided (please be specific): Vendor will provide portable  
Flock Falcon automatic license plate detection cameras, implementation/installation  
and associated service and storage

**I. Sole Source Waiver**

A. Are you requesting a sole source waiver for an amount between \$5,000 to

\$25,000: ☐ Yes ☒ No  
Approved by City Manager: \_\_\_\_\_

**II. Type of Agreement (new, amendment)**

A. Is this the first time you have entered into an agreement with this contractor within the last 5 years: ☒ Yes ☐ No

i. If YES, were bids received for this service: ☐ Yes ☒ No ☐ N/A

ii. If NO, please enter the cumulative value of previous agreements with the contractor and when it expired:

\$ \_\_\_\_\_  
Expiration Date (month/year)

Did you solicit bids when you entered into the previous agreements:

☐ Yes ☐ No ☐ N/A

B. Is this an Extension or Amendment of an existing Agreement: ☐ Yes ☒ No

i. If YES, please enter in the cumulative value of previous agreements with the contractor: \$ \_\_\_\_\_

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2021 JUL 11 P 3:51

OFFICE OF THE CITY CLERK  
CITY OF ANAHEIM

Agreement No. \_\_\_\_\_

**III. Value of the Agreement**

**A. Value of the proposed Agreement: \$27,500**

*\* City Manager's Authority is \$200,000 or \$500,000 during any five year period for the same consultant.*

i. If this is an extension or amendment, what is the cumulative value:

\$ \_\_\_\_\_

(combine the extension amount of the agreement and the original value of the agreement)

**B. List all other contracts the department has entered into with this consultant in the last 12 months, including a description of each contract and its value and the cumulative value of all contracts with that consultant.**

Contract Description		Date Authorized by City Manager or City Council	Value
1.			\$
2.			\$
3.			\$
4.			\$
Proposed Contract that you are requesting to be signed today (Total):			\$
Cumulative Total of all contracts, including the proposed contract:			\$

Check here if your department does not have any other agreements with this contractor.

**C. What is the term of the proposed new agreement/amendment:** 1 year  
(i.e. 1 year)

**D. Are there renewal options? If so, specify:** No  
  
(i.e. with an option to renew for three additional one year renewals)

**IV. Selection Process**

**A. Did the department solicit proposals from a minimum of three (3) qualified consultants:** ☐ Yes ☒ No

i. If YES, how many proposals were received: \_\_\_\_\_ (enter quantity)

ii. If NO, explain why you are requesting to utilize the consultant without receiving bids: Flock provides a unique, cost effective system.

**V. Funding Source**

**A. Was this agreement anticipated in the approved budget:** ☒ Yes ☐ No ☐ N/A

If NO, please explain: \_\_\_\_\_

**B. Choose the funding source:**

☒ General Fund ☐ Restricted ☐ N/A

☐ Other: \_\_\_\_\_