

# 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 this Agreement (“**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 Services**”), 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 (“**Notifications**”);

**WHEREAS**, Agency desires access to the Flock Service on 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; 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 or collected for Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. Intentionally omitted.

1.3 “**Authorized End User(s)**” shall mean any authorized 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 Flock software and/or firmware embedded or preinstalled on the 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 Hardware in the course of providing the Flock 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 Hardware.

1.11 “**Non-Agency End User(s)**” shall mean any individual, entity, or derivative therefrom utilizing the Flock Services under the rights granted to them through a separate Flock 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 **Intentionally omitted.**

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.

1.17 “**Term**” means the period of performance set forth in an executed purchase order issued by the Agency.

## **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 Term, solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator and any Authorized End Users to access via the Web Interface for a period of one (1) year following completion of the Term for Agency retrieval purposes as required by California State Law. 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 cause 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. Flock does not provide additional warranties on behalf of third-party hosting providers. If Agency does not agree to comply with the terms and policies of any third-party service provider upon which Flock’s Services rely to function, Flock may terminate its Services to Agency.

**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; 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 Term 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 Hardware, 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, 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, unless required to do so due to an emergency situation. 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 Flock IP and its components not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the Flock IP and its components 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 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 customer 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, the expiration of the Term will be extended by the duration of any suspension (for any continuous suspension lasting at least one full day) and 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 Hardware, Flock shall advise Agency on the recommended location and positioning of the Hardware to achieve optimal license plate image capture, as conditions and location allow. Flock shall finalize location, position and angle of the Hardware (each Hardware location so designated by Agency, a “**Designated Location**”). Flock shall have final discretion on location of Hardware; however, will under no circumstances place Hardware in any location that is expressly against Agency’s approval. 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 and final discretion on the location of Hardware Reinstalls. However, Flock will under no circumstances place or reinstall Hardware in any location that is expressly against Agency’s approval.

**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 Hardware is 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 Hardware, 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 Agency-request supplementary costs for services performed in connection with installation of the Hardware, including but not limited to specialized 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 an Agency-issued purchase order. In the event that a Designated Location for the Hardware 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 Hardware 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. The Hardware will operate on solar power only unless specifically requested otherwise by Agency, in which case, Agency shall be responsible for any third-party costs associated with the provision of the alternative power. 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, subject to the provisions of 2.7.1 and as specified in an Agency-issued purchase order.

**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 Flock Hardware and Services 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 solely to monitor performance and provide any necessary maintenance 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.

**2.7.4 Security Interest.** Flock Hardware shall remain the personal property of Flock and will be removed upon at the end of the Term or upon termination 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. In the event such removal will interfere with traffic, Flock shall coordinate such removal with Agency. 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 as authorized by an Agency-issued purchase order, 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 and must be memorialized in an Agency-issued purchase order 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. Such Special Terms will require a written addendum to this Agreement.

**2.10 Changes to Platform.** Flock may, in its sole discretion, make any changes to any Flock 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 Agency, (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. Such changes shall not alter Flock's service obligations under this Agreement.

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

**3.1 Agency Obligations.** Flock will assist Agency Authorized 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. Additionally, Agency Obligations shall include any additional provisions specified in an Agency-issued purchase order.

**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 this Agreement or any applicable laws and regulations.

#### 4. CONFIDENTIALITY; AGENCY DATA

**4.1 Confidentiality.** All data, documents, discussions, features, functionality, performance, or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law. 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 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 information. Nothing in this Agreement will prevent the receiving Party from disclosing the information, including the Footage and Agency Data, pursuant to any judicial order, provided that the receiving Party gives the disclosing Party reasonable prior notice of such disclosure to contest such order.

**4.2 Agency Data.** All right, title and interest in the Agency Data, solely belong to the 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). Flock will automatically delete Footage older than one (1) year. This provision shall survive termination of this Agreement or the Term.

**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 that feedback.

**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 Term) to 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. 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

**5.1a Wing Fees.** For Flock Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as specified and pre-approved by Agency in an Agency-issued purchase order, together the “**Initial Fees**”) on or before the 30th day following receipt of the Flock invoice. Flock shall have no liability due to any payment delay by the Agency in installing the Hardware and providing the Flock Services. If applicable, Agency shall pay the ongoing Usage Fees set forth in an Agency-issued purchase order with such Usage Fees due and payable prior to each payment period and following receipt of an Agency-approved Flock invoice. All payments will be made by either ACH, check, or credit card.

**5.1b 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 in an Agency-issued purchase order, together the “Initial Fees”) on or before the 30th day following receipt of Flock’s initial invoice. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and upon Agency approval, Agency shall pay on or before 30th day following receipt of an Agency-approved invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and, upon Agency approval, Agency shall pay on or before the 30th 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.

**5.2 Changes to Fees.** Flock reserves the right to change the fees or applicable charges. The Agency shall reflect any Agency-approved fees and charges in an Agency-issued purchase order. If Agency believes that Flock has billed Agency incorrectly, Agency will 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.

**5.3 Invoicing; Taxes.** Flock shall issue invoices in accordance with the Agency-issued purchase order. Agency shall pay Flock based on net thirty (30) day payment terms, provided Agency has issued a purchase order for such invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than taxes based on Flock’s net income and taxes, employee compensation, contributions, and benefits (such as, but not limited to, workers’ compensation benefits) which Flock is required to pay relating to the employment of employees.

## **6. TERM AND TERMINATION**

**6.1a Wing Term.** Subject to earlier termination as provided below, the Initial Term of this Agreement shall be for the period of time set forth on the Agency-issued purchase order. Following the Initial Term, unless otherwise indicated on the Agency-issued purchase order, this Agreement may be renewed for successive renewal terms for the greater of one year and the length set forth on the Agency-issued purchase order (each, a “Renewal Term”, and together with the Initial Term the Service Term”) upon written notice of renewal prior to the end of the then-current term. , .

**6.1b Falcon Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Agency-issued purchase order (the “Initial Term”). Following the Initial Term, unless otherwise indicated on the Agency-issued purchase order, this Agreement may be renewed for successive renewal terms for the greater of one year and the length set forth on the Agency-issued purchase order (each, a “Renewal Term”, and together with the Initial Term, the “Service Term”) upon written notice of renewal prior to the end of the then-current term.

**6.2 Termination for Convenience.** At any time during the agreed upon Term, Agency may terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Flock Hardware. This fee is the minimum amount required for Flock to remove the Hardware. Upon termination for convenience, a refund will be provided for Hardware, prorated for any prepaid unused fees for the remaining Term length set forth. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering unpaid amounts for Services provided through the date of termination. Flock will notify Agency at least one (1) week prior to removal of all Flock Hardware, and Flock shall at Flock’s own convenience, complete removal 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 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 to the satisfaction of the non-breaching Party 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.

**6.5 No-Fee Term.** For the Term of this Agreement, Flock will provide Agency with complimentary access to 'hot-list' alerts, which may include 'hot tags', stolen vehicles, Amber Alerts, etc. ("**No-Fee Term**"). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

**6.6 Survival.** The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 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, or one of its contractors, shall 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 Hardware 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 Hardware at no additional cost. In the event that a Hardware is lost, stolen, or damaged, Agency may request that Flock replace the Hardware 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 Hardware, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Hardware and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 if Agency caused the malfunction or failure of the Flock Hardware or Embedded Software by using it in a manner not permitted under this Agreement.

**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 its 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 AND THE AGREEMENT, 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. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE OF CALIFORNIA.



**7.5 Insurance.** Flock will maintain insurance policies in compliance with Agency's insurance requirements and provide Certificates of Insurance to demonstrate compliance.

**7.6 Force Majeure.** Neither Party is responsible or liable for any delays or failures in performance arising out of or caused by, directly or indirectly, forces beyond its control, including, but not limited to, acts of God, embargoes, war, terrorist acts, riots, fires, earthquakes, floods, power blackouts, strikes, severe weather conditions, or acts of hackers. Flock is not responsible or liable for internet service providers or any other third party or acts or omissions of Agency or any Authorized End Users.

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

**8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS, OFFICERS, AFFILIATES, REPRESENTATIVES, 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, GROSS NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR CRIME PREVENTION; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000) THIS LIMITATION OF LIABILITY SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE OF CALIFORNIA AND DOES NOT APPLY TO CLAIMS RELATING TO DEATH, PERSONAL INJURY, PROPERTY DAMAGE, OR INFRINGEMENT.

**8.2 Additional No-Fee Term Requirements.** IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.5 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complimentary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

**8.3 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.

**8.4 Indemnity.** Flock shall defend, indemnify, and hold harmless Agency, its officers, employees, and agents against any claim, loss, damages, expenses, or liability that - directly or indirectly or in whole or in part - arise out of, pertain to, or result in any way from work performed under this Agreement due to the willful, reckless, or negligent acts (active or passive) or omissions by Flock's officers, employees, agents, or subcontractors in the performance of Installation Services on Agency property. The acceptance of said services and duties by Agency shall not operate as a waiver of such right of indemnification. This provision shall survive the termination of this Agreement. Furthermore, Flock agrees to defend and indemnify Agency of all direct losses, costs, and damages resulting from a determination that the products or services supplied to Agency infringe any third party patent rights, copyrights, or trademarks provided that Agency (1) promptly notifies Flock in writing upon Agency becoming aware of the existence of any such suit, action, proceeding threat; (2) allows Flock sole

control of the defense and/or settlement thereof; and (3) provides such reasonable cooperation as Flock may require. In no event shall Agency consent to any judgment or decree or do any other act in compromise of any such claim without Flock's express prior written consent. In no event will Flock be liable for the payment of any amount agreed to in settlement without Flock's express consent. In the event that Agency is enjoined from use of the products or services provided under this Agreement due to a proceeding based upon infringement of patent, copyright or trademark, Flock shall, at its option, either:

- 13.1 Modify the infringing item(s) at Flock's expense, so it becomes non-infringing; or
- 13.2 Replace the infringing item(s) with equal non-infringing item(s), at Flock's expense; or
- 13.3 Procure, at Flock's expense, the necessary licenses for the Agency to continue using the item(s); or
- 13.4 Remove the item(s) and refund the purchase price less a reasonable amount for depreciation.

## 9. RECORD RETENTION

9.1 **Data Preservation.** Flock shall store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules for a period of one (1) year following the Term as specified in an Agency-issued purchase order.

## 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 either Party except with the prior written consent of the other Party.

10.3 **Entire Agreement.** This Agreement, together with any addenda and Agency-issued purchase orders, 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.

10.5 **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of California. The Parties hereto agree that venue will be in a court of competent jurisdiction in the County of Santa Clara or in the United States District Court for the Northern District of California. 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 consent from Agency, Flock has the right to reference and use Agency's name 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.** 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.

**10.11 Counterparts.** This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**10.12 Use of Electronic Signatures.** Unless otherwise prohibited by law or Agency policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the Agency.

IN WITNESS HEREOF, the parties represent that this Amendment is executed by duly authorized representatives for each Party as set forth below:

**City of San José (Agency)**

a mu

By

Email: vickie.davis@sanjoseca.gov

Vickie J. Davis

IT & Strategic Procurement Manager

**Flock Group, Inc.,** a Delaware corporation  
authc

By

Email: alex@flocksafety.com

Alex Latraverse

Chief Revenue Officer

**APPR**

By

Email: diana.yuan@sanjoseca.gov

Diana Yuan

Deputy City Attorney

By

Email: michael.molina@flocksafety.com

Michael Molina

Director, Head of Legal