



## SECTION V

# MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** (this "**Agreement**") between City of Aurora, Colorado ("**City**") and the service provider as more particularly described on the signature page to this Agreement ("**Provider**") is made effective as of the effective date set forth on the signature page of this Agreement (the "**Effective Date**"). Provider and City are each a "**Party**" and together are the "**Parties**."

### 1. SERVICES; STATEMENT OF WORK; CHANGE ORDERS.

**1.1 Services.** Provider will provide to City the services (the "**Services**") and the deliverables (the "**Deliverables**") as described in a Statement of Work, substantially in the form of **Exhibit A1 ("SOW")**, or, in the case of providing only Software as a Service (SaaS) or Off the Shelf Software (OTSS) as described in a Warranted Working Parameters of Purchased Product substantially in the form of Exhibit A2 (WWPPP) in accordance with the terms and conditions of this Agreement.

**1.2 Statement of Work.** *(When Applicable)* Each SOW will describe in comprehensive detail such that a court would be clear as to the terms the Services to be performed for City by Provider, any Deliverables to be provided by Provider to City, the fees to be paid for successful performance of the Services and a schedule for such payments whether by calendar date or by milestones completed, as well as acceptance criteria for the Deliverables, and when and where the Services, the Deliverables, and any milestones will be performed or provided. Each SOW must be signed by both Parties to be effective and enforceable and will be subject to and governed by the terms and conditions of this Agreement except to the extent explicitly agreed by the Parties otherwise.

**1.2.1 Warranted Working Parameters of Purchased Product** *(When Applicable)* Each WWPPP will describe in detail what is customary within the industry and in comprehensive detail such that a court would be clear as to the nature capacity, and functionality of the software to be provided including as well the number of licenses provided, if applicable, and any End User License Agreement(s) (EULA) the software is conditioned upon or subject to. **Provider specifically acknowledges that any EULA presented to the City at any time in relation to this Agreement is subsidiary and subservient to the terms of this Master Services Agreement and in the event of a conflict of terms that this Master Services Agreement shall prevail.**

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(Initials of Provider acknowledging this provision, absent which no Agreement has been reached between the Parties)

**1.3 Change Orders.** If either Party wishes to change the scope, conditions, or performance of the Services or the Deliverables, or of the Warranted Working Parameters of the Purchased Product whichever is applicable, it will submit comprehensive details of the requested change such that a court would be clear as to the terms to the other Party in writing. If the requested change is initiated, in writing, by the City Provider will, within five business days after receipt of such request provide a written estimate to City that includes the time required to implement the change, the cost adjustments associated with such change, and any other impact such change may have on the performance of this Agreement or the applicable SOW such that the parties can agree to the change or proceed under the terms of the original Agreement if accord on the change cannot be reached. Promptly, but in no event later than 10 business days after receipt of the written estimate, the Parties will negotiate and agree in writing on the terms of such change (a "**Change Order**") or the request shall be considered abandoned. Reciprocally, if an amended Statement of Work or supplemental Deliverables are suggested by the Provider the City shall, within 5 business days after receipt of such request, inform the Provider of the City's intent to accept or reject the request subject to final, formal signed acceptance in writing of the amendment. Neither Party will be bound by any Change Order unless mutually agreed upon in writing in accordance with Section 15.10.

### 2. FEES AND EXPENSES; PAYMENT TERMS.

**2.1 Fees.** In consideration of the provision of the Services and the Deliverables by Provider and/or the delivery and successful installation and activation of any OTSS or SaaS and further in consideration of the rights granted to City under this Agreement, City agrees to pay the fees set forth in the applicable SOW ("**Fees**") on the schedule set forth therein, and in conformity with any acceptance criteria listed therein and/or to pay the fee set forth in the applicable WWPPP, whichever are applicable. To the extent contemplated in the applicable SOW and/or PPWWW, City may retain certain percentages of the Fees to secure completion of the Services and Deliverables and/or installation and successful activation of the SaaS or OTSS. Payment to Provider of the Fees, less any retainage, will constitute payment in full for the performance of the Services and the creation of the Deliverables and/or for installation and successful activation of the SaaS or OTSS and, City will not be responsible for paying any other fees, costs, or expenses.

**2.2 Appropriations Constraints.** The Parties explicitly agree that, given City is a governmental entity and subject to annual budget constraints, Provider may not increase the Fees or its rates specified in the applicable SOW or WWPPP without prior written consent of City.

**2.3 Time and Materials.** Where the Services are provided on a time and materials basis, unless set forth otherwise in the applicable SOW, the Fees will be calculated in accordance with Provider's fee rates. Provider will issue monthly invoices to the City representative for Provider's fees for time for the immediately preceding month.

**2.4 Fixed Fees.** Where the Services are provided for a fixed price, the Fees will not exceed the amount in the applicable SOW. The Fees will be paid to Provider in installments, as set out in the SOW, with each installment being conditioned on City's acceptance and Provider achieving the corresponding milestone. Similarly, where SaaS or OTSS is provided the Fees will not exceed the amount in the applicable WWPPP and will be paid in accordance with the conditions set forth in the WWPPP.

**2.5 Invoices.** Provider will issue invoices to City only in accordance with the terms of this Section 2, and City will pay all properly invoiced amounts due to Provider within 30 days after City's receipt of such invoice, except for any amounts disputed by City in good faith. In the event of a good faith dispute as to amounts owed and payable the Parties shall reach mutual accord, in writing, within 10 business days or the aggrieved Party may schedule the matter for alternative dispute resolution by a mutually agreeable method. All payments will be in US dollars and made by check or wire transfer.

**2.6 Taxes.** Provider will pay and be responsible for any taxes imposed on, or with respect to, Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

### **3. INSPECTIONS AND ACCEPTANCE.**

**3.1 Inspections.** City may observe the Services, and inspect the Deliverables and/or, when applicable inspect and confirm the installation and activation of any purchased SaaS or OTSS at any reasonable time for compliance with the standards, requirements, specifications, and instructions described in the applicable SOW or WWPPP ("**Acceptance Criteria**"). Acceptance Criteria and procedures may be jointly agreed to by the Parties and detailed in the applicable SOW or WWPPP. When a SOW or WWPPP does not include Acceptance Criteria, the acceptance of the Services and the Deliverables or the SaaS or OTSS will be based on conformance to the generally applicable standards for such Services or Deliverables within the applicable industry, as determined by City in its reasonable discretion subject to a challenge, in court, of such discretion.

**3.2 Non-Complying Work.** City reserves the right to determine in good faith whether the Services and the Deliverables or the SaaS or OTSS product, or any portion thereof, conform to the Acceptance Criteria. Should the Provider dispute such good faith determination the matter may be resolved using alternative dispute resolution. The Services and the Deliverables or the functionality and capacity of the SaaS or OTSS that City determines do not conform to applicable Acceptance Criteria will be referred to as "**Non-Complying Work**." City will provide notice to Provider of Non-Complying Work and the reasons for non-compliance. City's notice of non-complying work must be in writing and must be delivered within 30 days of being invoiced or noticed of completion of the work, or at the first reasonable opportunity to discover the non-compliance in the event that the defect or non-compliance cannot reasonably be expected to be discovered upon submission of the notice of the work or of the invoice but rather upon use of the service or product."

**3.3 Correction of Non-Complying Work.** Provider will use commercially reasonable efforts to correct Non-Complying Work as promptly as feasible after notice of non-compliance from City. City will not be obligated to pay for any Non-Complying Work and Provider will not be entitled to compensation for the Services or materials necessary to correct or re-perform Non-Complying Work. Should the Services or the Deliverables become or be discovered to be Non-Complying Work after payment has been made, City may withhold payment of future invoices or may request refund of such amounts. If after three attempts to correct or re-perform the Non-Complying Work, or regardless of number of attempts if the Non-Complying Work is not corrected within 10 days after notice of non-compliance to Provider, City may terminate this Agreement or the applicable SOW and require a refund of any Fees paid for such Non-Complying Work.

### **4. PROVIDER PERSONNEL AND PERMITTED SUBCONTRACTORS**

**4.1 Contract Managers and Key Personnel.** Provider will designate a representative to be the primary point of contact in dealing with City for each SOW and/or WWPPP ("**Provider Contract Manager**"). Provider Contract Manager will have the authority to act on behalf of Provider. Provider's appointment of Provider Contract Manager is subject to City's written approval, approval which shall not be unreasonably withheld. Provider will maintain the same Provider Contract Manager throughout the Term except for changes in such personnel due to: City's request; the resignation or termination of such personnel; or other circumstances outside of Provider's reasonable control. Upon City's reasonable request based upon articulable assertions, in writing, that such personnel are not performing to industry standards, and at Providers expense, Provider will promptly replace Provider Contract Manager, and any other Provider employees and Permitted Subcontractors (as defined below) ("**Provider Personnel**"). Nothing contained in this Agreement will create any employment relationship between City and Provider or Provider Personnel.

(Optional Clause, to be removed when not applicable) City has entered this Agreement in reliance upon the fact that Provider has represented to the City that the following Key Personnel will remain employed with Provider throughout the completion of the terms of this Agreement and that such Key personnel will actively work on completing all obligations set forth in the SOW and/or WWPPP. The Key Personnel are:

Aaron Montez – Project Management\_\_\_\_\_

Micheal Franzen – Permitting\_\_\_\_\_

**4.2 Provider Personnel Requirements.** Prior to any Provider Personnel performing any Services or creating any Deliverables hereunder, or if applicable performing any installation or activation of SaaS or OTSS, and upon request of City from time to time, Provider will: (a) ensure that such Provider Personnel have the legal right to work in the United States; and (b) Provider represents to City that it has done due diligence to industry standards on investigating the backgrounds of any persons who will perform services under the terms of this contract and that Provider is not utilizing felons or persons who could reasonably be considered security risks to City personnel, City computing security systems, or to the integrity of personal identifying information or private consumer data of foreseeable third parties to be served by the systems or deliverables.

**4.3 Provider Personnel Compensation.** Provider is responsible for all Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

**4.4 Permitted Subcontractors.** Prior to engaging any subcontractors or third parties to perform services under the terms of this Agreement Provider will submit a completed "Third Parties Notice Form (Exhibit B to this Agreement) to the City for review and approval, which approval shall not be unreasonably withheld. Any decision to withhold agreement shall be made in writing and returned to provider within 15 days of submission of the form and shall contain a statement as to the reason for disapproval. Approval also shall be in writing and submitted by City to Provider within 15 days. City's approval of any Permitted Subcontractor will not relieve Provider of its obligations under this Agreement. Provider will remain fully responsible for the performance of each Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Provider's own employees. Nothing contained in this Agreement will create any contractual relationship between City and any Provider subcontractor or supplier. Provider will require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property provisions of this Agreement and to enter into a non-disclosure agreement, intellectual property assignment, license agreement, or similar agreement, in a form that is reasonably satisfactory to City.

## **5. PROVIDER'S OBLIGATIONS**

**5.1 Licenses and Consents.** Provider will, before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant statutes, laws, ordinances, regulations, rules, codes, orders, constitutions, treaties, common laws, judgments, decrees, other requirements or rules of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction ("Laws") applicable to the provision of the Services and creation and delivery of the Deliverables or, when applicable, to delivery and successful installation and activation of any OTSS or SaaS.

**5.2 Rules and Regulations.** Provider will comply with, and ensure that all Provider Personnel and Permitted Subcontractors comply with, all rules, regulations, practices and policies of City that are communicated to Provider, including, without limitation, security procedures concerning systems and data and remote access thereto, building security procedures, restricted access to certain areas of City premises or systems, and general health and safety practices and procedures.

**5.3 Records.** Provider will maintain complete and accurate records of the time spent and materials used by Provider in providing the Services and creating the Deliverables. During the Term and for a period of two years thereafter, upon City's written request, Provider will allow City and City's designated representatives to inspect and make copies of such records.

**5.4 Time is of the Essence.** Provider acknowledges that time is of the essence with respect to Provider's obligations hereunder and that prompt and timely performance of all such obligations, including all timetables, milestones, and other requirements in this Agreement and each SOW and/or WWPSP, is strictly required.

### **5.4.1 Liquidated Damages. (N/A)**

**5.5 Territory.** The obligations of Provider under this Agreement will be performed fully within the United States, unless approved in writing in advance by City's Chief Information Security Officer (CISO).

## **6. CITY'S OBLIGATIONS.**

**6.1 Contract Manager.** City will designate a representative to be the primary point of contact in dealing with Provider for each SOW ("City Contract Manager").

**6.2 Cooperation.** City will cooperate with Provider in matters relating to the Services and appoint and replace, in its reasonable discretion, a City employee to serve as the City Contract Manager with respect to this Agreement. Such City Contract Manager will have the authority to act on behalf of City with respect to matters pertaining to this Agreement. City agrees to respond in writing to Provider requests for direction, information, approvals, authorizations, or decisions that are reasonably necessary for Provider to perform the Services in accordance with the requirements of this Agreement. City agrees to provide such City Materials (as defined below) as Provider may reasonably request in order to fulfill their contractual obligations to the City.

**6.3 Access.** Subject to Section 5.2, City will provide such access to City's premises as may reasonably be required by Provider and agreed with by City in writing in advance, for the purposes of performing the Services.

## **7. TERM AND TERMINATION.**

**7.1 Term.** This Agreement will commence as of the Effective Date and will continue thereafter for a period of one year or until the SOW and/or WWPPP is fulfilled ("**Initial Term**"), unless sooner terminated pursuant to this Section 7. Upon the expiration of the Initial Term, and upon the condition that the SOW or WWPPP contemplates ongoing maintenance, licensing, or other ongoing obligations this Agreement will automatically renew for additional periods of one year (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either Party provides written notice to the other Party of its intent not to renew at least 30 days prior to the expiration of the then-current Term. The Initial Term and each Renewal Term remain subject to City's annual appropriations and to Section 7.5.

**7.2 Termination by City.** City, in its sole discretion, may terminate this Agreement or any SOW or WWPPP, in whole or in part, at any time without cause, by providing at least 30 days' prior written notice to Provider. Sole Discretion Termination by the City requires that the City pay, within 30 days, all costs and expenses properly invoiced or reasonably incurred up to the date of termination, including any cost adjustments specifically set forth in the SOW and/or WWPPP for early termination or Sole Discretion Termination.

**7.3 Termination by Either Party.** Either Party may terminate this Agreement, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party:

- (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 10 days after receipt of written notice of such breach.
- (b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due, (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing, (iii) is dissolved or liquidated or takes any company action for such purpose, (iv) makes a general assignment for the benefit of creditors, or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**7.4 Effect of Termination.** Upon expiration or termination of this Agreement for any reason:

- (a) Provider will (i) promptly deliver to City all Deliverables (whether complete or incomplete) and all documents, information, data, know-how, methodologies, software, and other materials provided to Provider by City ("**City Materials**"), (ii) promptly remove any Provider equipment located at City's premises, (iii) provide reasonable cooperation and assistance to City in transitioning the Services to an alternate service provider, and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services which have not been provided or any Deliverables which have not been completed or products or programs not installed and/or properly activated.
- (b) Each Party will (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other Party's Confidential Information (as defined below), (ii) permanently erase or return, at the option of the disclosing Party, all of the other Party's Confidential Information from its computer systems, except to the extent necessary to comply with applicable Law or Regulation, and (iii) certify in writing to the other Party that it has complied with the requirements of this Section 7.4(b); provided, however, that City may retain copies of any Confidential Information of Provider incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Services and the Deliverables, including installed software.
- (c) In no event will City be liable for any Provider Personnel termination costs arising from the expiration or termination of this Agreement.

**7.5 City Restrictions.** This Agreement is subject to annual appropriation by the Aurora City Council and, in the absence of appropriated funds, City may terminate this Agreement or any applicable SOW and /or WWPPP immediately upon written notice to Provider. Nothing in this Agreement is a pledge of City's credit, or a payment guarantee by City to Provider. Nothing contained herein will constitute a mandatory liability, charge, or requirement of or against City in any ensuing fiscal year of City beyond the then current fiscal year of City. Neither this Agreement nor any SOW will constitute a general obligation or other indebtedness of City, or a multiple fiscal year direct or indirect debt, or other financial obligation whatsoever of City within the meaning of the Constitution of the State of Colorado and laws of the State of Colorado or of the Charter and ordinances of the City of Aurora. In the event of a default by City of any of its obligations under this Agreement, Provider will have no recourse against any revenues of the City of Aurora, its affiliates,

or its agencies. Notwithstanding any language herein to the contrary, nothing in this Agreement or corresponding SOW, will be construed as creating a lien against any revenues of City. City is subject to the Colorado Open Records Act, §24-72-201, et. seq., C.R.S. (2017) (“**CORA**”) and City’s compliance with CORA will not be considered a breach of this Agreement or any applicable SOW. Additionally, to the extent Provider holds information that City is required to disclose pursuant to CORA, Provider agrees to cooperate with City to comply with such disclosure requirements.

**7.6 Survival.** The rights and obligations of the Parties set forth in this Section 7, and Section 8, Section 9, Section 10, Section 12, Section 13, and Section 14, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

## **8. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP.**

**8.1 City Ownership of Deliverables.** City is, and will be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights (as defined below) therein. Provider agrees, and will cause its Provider Personnel to agree, that with respect to any Deliverables that may qualify as “**work made for hire**” as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a work made for hire for City. To the extent that any of the Deliverables do not constitute a work made for hire, Provider hereby irrevocably assigns, and will cause Provider Personnel and Permitted Subcontractors to irrevocably assign to City, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Provider will cause Provider Personnel and Permitted Subcontractors to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Provider Personnel may now or hereafter have in any jurisdiction to so-called “moral rights” or rights of droit moral with respect to the Deliverables. Upon the request of City, Provider will, and will cause Provider Personnel and Permitted Subcontractors to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist City to prosecute, register, perfect, or record its rights in or to any Deliverables. “**Intellectual Property Rights**” means all: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**8.2 Provider’s Pre-Existing Materials.** Provider and its licensors are, and will remain, the sole and exclusive owners of all right, title, and interest in and to the pre-existing materials specified in a SOW as well as all documents, data, know-how, methodologies, software, and other materials, provided by or used by Provider to perform the Services, in each case developed or acquired by Provider prior to the commencement of this Agreement (“**Pre-Existing Materials**”), including all Intellectual Property Rights therein. Provider hereby grants City an irrevocable, perpetual, fully paid-up, royalty-free, non-transferable, non-sublicensable, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell, and otherwise exploit any Pre-Existing Materials to the extent incorporated in, combined with, or otherwise necessary for the use of the Services or the Deliverables for any and all purposes. All other rights in and to the Pre-Existing Materials are expressly reserved by Provider.

**8.3 Ownership of City Materials.** City and its licensors are, and will remain, the sole and exclusive owner of all right, title, and interest in and to the City Materials, including all Intellectual Property Rights therein. Provider will have no right or license to use any City Materials, except solely during the Term of this Agreement to the extent absolutely necessary to provide the Services or create the Deliverables as set forth in this Agreement. All other rights in and to the City Materials are expressly reserved by City.

## **9. CONFIDENTIAL INFORMATION.**

**9.1 Definition of Confidential Information.** “**Confidential Information**” means any information that is treated as confidential by a Party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information will not include information that: (a) is already known to the Party that receives it (the “**Receiving Party**”) without restriction on use or disclosure prior to receipt of such information from the Party that discloses it (the “**Disclosing Party**”); (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party, as evidenced in written documentation; (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information; or (e) which is submitted to the City by the Provider as part of a bid to obtain the contract unless that bid submission material is clearly marked as confidential and does not fall under a CORA exception such that it is material the City would have to produce on a CORA request under Section 24-72-201 et. seq., C.R.S.

**9.2 Nondisclosure.** The Receiving Party agrees:

- (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors who have a "need to know," who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 9;
- (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under this Agreement or, in the case of City, to make use of the Services and the Deliverables; and
- (c) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

**9.3 Compelled Disclosure.** If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party will provide:

- (a) prompt written notice within 48 hours of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy;
- (b) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure; and
- (c) if, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, upon the Disclosing Party's request, will use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

## **10. PRIVACY AND DATA PROTECTION**

**10.1 Access and Use.** Provider may access and use the City Data, City Systems, and Personal Data (each as defined below) only on behalf of, and for the benefit of, City and only to carry out its obligations under this Agreement and in accordance with City's instructions. Provider will not transfer City Data or Personal Data outside the United States without the explicit written consent of City. "**Personal Data**" means any information relating to an identified or identifiable individual, regardless of the media in which it is contained. At the very least Personal Data includes social security numbers; personal identification numbers; passwords; pass codes; driver license numbers; government-issued identification card numbers; passport numbers; biometric data as defined in Section 6-1-716 (1)(a) C.R.S.; employer, student, or military identification numbers; and/or a financial transaction device or corresponding numbers as defined in Section 18-5-701 (3) C.R.S. "**City Data**" means any information about City's business processes, security, technology infrastructure, employee and citizen identifiers, and any regulated data. "**City Systems**" means any information technology system, equipment, network (virtual or physical) that is owned, controlled, leased, or rented by City or its affiliates.

**10.2 Authorized Disclosure.** Provider will not share, transfer, disclose, or otherwise provide access to any City Data, City Systems, or Personal Data to any third party or affiliate unless City has expressly authorized Provider to do so in writing in advance, pursuant to **Exhibit B**. Provider will immediately inform City in writing of any requests with respect to Personal Data received from City's customers, employees, or others. Provider will respond to such requests only in accordance with City's instructions. Provider will cooperate with City if an individual requests access to his or her Personal Data for any reason.

**10.3 Privacy and Information Security Requirements.** Provider will comply with the Privacy and Information Security Requirements set forth in this Agreement and as further set forth on **Exhibit C**. Provider will develop, maintain and implement a comprehensive written information security program that complies with all applicable Privacy and Information Security Requirements (as defined below) at its sole expense, except, in the case of Providers providing only OTSS or SaaS who may present in their WWPPP alternative plans or documents addressing Information Security which plans or documents may be accepted by the City's CISO in lieu of the requirements of this Section. "**Privacy and Information Security Requirements**" means: (a) all applicable international, federal, state, provincial and local laws, rules, regulations, directives, and governmental requirements relating in any way to the privacy, confidentiality, or security of Personal Data, including, without limitation: Criminal Justice Information Services Security Policy, Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, the Family Educational Rights and Privacy Act, 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records), the Genetic Information Nondiscrimination Act of 2008, the Payment Card Industry Data Security Standard, the Payment Application Data Security Standard, the Data Protection Act 1998, Directive 95/46/EC (to be repealed and replaced by Regulation (EU) 2016/679 on May 25, 2018), Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); the Gramm-Leach-Bliley Act; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Data; all provisions of Colorado House Bill 18-1128 pertaining to consumer

data privacy and proper disposal of personal identifying information including specifically the protections thereunder incorporated into § 6-1-713 C.R.S., § 6-1-713.5 C.R.S., § 6-1-716 C.R.S., § 24-73-101 C.R.S. and § 24-73-102 C.R.S., which mandates that the City have these protections in this Agreement; and all other similar international, federal, state, provincial, and local requirements; and (b) all applicable provisions of the written information security requirements of City or Provider, except those the Parties have agreed are inapplicable.

**10.4 Provider's Information Security Program.** Provider's information security program will include appropriate technical, physical, and organizational safeguards designed to: (a) ensure the security and confidentiality of City Data, City Systems, and Personal Data; (b) protect against any reasonably anticipated threats or hazards to the security and integrity of City Data, City Systems, and Personal Data; and (c) protect against any actual or suspected unauthorized access, use, loss, disclosure, or acquisition of or to any City Data, City Systems, and Personal Data (each (a), (b), and (c), an "**Information Security Incident**"). Provider's information security program will, among other things, include regular testing and monitoring of the effectiveness of Provider's information safeguards. Upon request from City, and subject to the reasonable discretion of City, Provider will permit City and City's designated representatives to conduct an audit and review of Provider's information security program and all records, documents, and information applicable thereto ("**Security Review**"). Provider agrees to fully cooperate with such Security Review at Provider's sole cost and expense. Provider will exert best efforts to correct all material problems disclosed by any of the foregoing audits or reviews, at its sole expense.

**10.5 Notice of Security Incident.** Subject to applicable legal, regulatory, or law enforcement requirements, Provider will immediately inform City in writing of any Information Security Incident involving City Data, City Systems, or Personal Data of which Provider or any Permitted Subcontractor becomes aware. Such notice will summarize in reasonable detail the effect on City, if known, of the Information Security Incident and the corrective action taken or to be taken by Provider. Provider will promptly take all necessary corrective and remedial actions (at its sole cost and expense) and will cooperate fully with City in all reasonable and lawful efforts to mitigate the effects of such Information Security Incident. Subject to applicable legal, regulatory, or law enforcement requirements, Provider must obtain the approval of City prior to the publication or communication of any filings, communications, notices, press releases, or reports related to any Information Security Incident that expressly mention City.

## **11. REPRESENTATIONS AND WARRANTIES.**

**11.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws and regulations of its jurisdiction of formation;
- (b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative has been duly authorized by the Party; and
- (d) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

**11.2 Provider Representations and Warranties.** Provider represents and warrants to City that:

- (a) it will perform the Services and create the Deliverables using personnel of required skill, experience, and qualifications and in a professional, good, and workmanlike manner in accordance with best industry standards for similar services and deliverables;
- (b) it has all requisite personnel, competence, skill, and physical resources to provide the Services and create the Deliverables;
- (c) it is in compliance with, and will perform the Services and create the Deliverables in compliance with, all applicable Laws;
- (d) City will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;
- (e) the Services, the Deliverables, and City's use thereof does not and will not infringe on any third party's Intellectual Property Right;
- (f) as of the Effective Date, there are no pending or, to Provider's knowledge, threatened claims, litigation, or other proceedings pending against Provider by any third party alleging a violation of Intellectual Property Rights;
- (g) the Services and the Deliverables will be in conformity with all requirements or specifications stated in this Agreement and the applicable SOW and/or, when applicable the WWPPP;
- (h) to the extent that Provider provides software hereunder, Provider represents and warrants to City that it will not contain any feature, code, or instructions (including any code or instructions provided by third parties) that may be used to access, modify, delete, damage, or disable any computer, associated equipment, computer programs, data files, or other electronically stored information operated or maintained by City including, without limitation (i) software locks, drop dead devices, back doors, time bombs, keys, or other software routines which may disable a computer program automatically with the passage of time or under the positive control of a person other than City, or (ii) any form of virus, a Trojan horse, worm, or other software routines or hardware components

that may permit unauthorized access or disable, erase, or otherwise harm software, hardware, or data. Provider further represents and warrants that it will not impair the operation of any other software or hardware of City in any way for any reason whatsoever. Provider hereby expressly waives and disclaims any right or remedy it may have at law or in equity to de-install, disable, or repossess (except as may otherwise be expressly provided in this Agreement) any Deliverables or software provided under this Agreement, even in the event City fails to perform any of its obligations under this Agreement absent having first obtained a ruling or order from a court of competent jurisdiction that the City has failed to perform its material obligations, and absent providing the City sufficient and reasonable time and notice so that the City might acquire substitute systems. If Provider becomes aware of any potential breach of the obligations set forth in this Section 11.2(h), Provider will promptly notify City and will use best efforts to immediately and completely remedy the breach and all associated damages, losses, or problems caused by such breach; and

(i) unless specifically identified in the SOW and/or the WWPSP when applicable (or otherwise pre-approved in writing by City in **Exhibit B**), Provider will not use any third parties or include any third party software, including without limitation, any freeware or open source software ("**Third Party Software**") in the Deliverables. In no event will open source software that is licensed pursuant to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), or similar type of license be included in the Deliverables or be required for the operation or use of such Deliverables. If any Third Party Software is incorporated into the Deliverables pursuant to this Section 11.2(i) (and upon the prior written approval of City) (i) Provider will be fully responsible and liable for the representations, warranties, and other obligations set forth herein with regard to the Third Party Software, (ii) such Third Party Software will be deemed to be within the scope of the Deliverables, and (iii) City will not have any liability related to the Third Party Software. Any third Party Software that City is required to separately license in connection with the Deliverables will be specifically identified in the applicable SOW. Provider hereby represents and warrants that the Deliverables will operate with such separately licensed Third Party Software without error.

## **12. INDEMNIFICATION.**

**12.1 General Indemnification.** Provider will defend, indemnify, hold harmless, and reimburse City and its officers, directors, employees, agents, successors, and assigns (the "**Indemnitees**") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers ("**Losses**") arising out of, relating to, or resulting from any third party claim, suit, action, or proceeding (each, an "**Action**") arising out of, relating to, or resulting from:

(a) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the willful, fraudulent, or negligent acts or omissions of Provider, Provider Personnel, Permitted Subcontractors, or other persons or entities acting on behalf of Provider; and

(b) Provider's, Provider's Personnel's, Permitted Subcontractor's, or other person or entities acting on behalf of Provider breach of any representation, warranty, or obligation of Provider set forth in this Agreement.

**12.2 Infringement Indemnification.** Provider will defend, indemnify, hold harmless, and reimburse the Indemnitees from and against all Losses arising out of, relating to, or resulting from a claim that any of the Services or the Deliverables or City's receipt or use thereof infringes any Intellectual Property Right of a third party.

**12.3 Procedure.** Should City seek indemnification hereunder it will notify Provider in writing of any Action and cooperate with Provider, at Provider's sole cost and expense. Provider will immediately take control of the defense and investigation of such Action and will employ counsel of its choice and approved by City to handle and defend the same, at Provider's sole cost and expense. Provider will not settle any Action in a manner that adversely affects the rights of City, without City's prior written consent. City's failure to perform any obligations under this Section 12.3 will not relieve Provider of its obligations under this Section 12.3. City may participate in and observe the proceedings at its own cost and expense.

**13. CONSEQUENTIAL DAMAGES.** EXCEPT FOR PROVIDER'S OBLIGATIONS UNDER SECTION 2, SECTION 8, SECTION 9, SECTION 10, SECTION 11, AND SECTION 12, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **INSURANCE.**

**13.1 Types and Amount of Insurance.** At all times during the Term of this Agreement and for a period of three years thereafter, Provider will procure and maintain, at its sole cost and expense, insurance coverage as set forth on **Exhibit D**.

## **14. GENERAL PROVISIONS.**

**14.1 Further Assurances.** Each Party will, upon the reasonable request, and at the sole cost and expense, of the other Party, execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

**14.2 Force Majeure.** Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence, and

that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a **"Force Majeure Event"**). Provider's financial inability to perform, changes in cost, availability of materials, availability of work force, components, or services, market conditions, supplier actions, or contract disputes will not excuse performance by Provider under this Section 14.2. Provider will give City prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Provider will use commercially reasonable efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized, and resume full performance under this Agreement. If Provider will not be able to provide the Services or the Deliverables for a period of 10 consecutive days, or such other period of time as the Parties agree in writing, City will have the right to terminate this Agreement or any SOW and/or WWPPP, in whole or in part, on written notice to Provider. During the Force Majeure Event, the non-affected Party may suspend its performance obligations until such time as the affected Party resumes performance.

**14.3 Independent Contractors.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

**14.4 Publicity.** Neither Party will issue or release any announcement, statement, press release, other publicity, or marketing materials relating to this Agreement, or otherwise use the other Party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other Party.

**14.5 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder will be in writing and will be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or electronic mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated on the signature page of this Agreement (or at such other address for a Party as will be specified in a notice given in accordance with this Section 14.5).

**14.6 Interpretation; Construction.** For purposes of this Agreement: (a) the words "include," "includes," and "including" will be deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules, exhibits and statements of work refer to the sections of, and schedules, exhibits, and statements of work attached to this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute or regulation means such statute or regulation as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The schedules, exhibits, and statements of work referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

**14.7 Entire Agreement; Order of Precedence.** This Agreement, together with all schedules, exhibits, appendixes, statements of work, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any schedule, exhibit, or statement of work, the following order of precedence will govern: (a) first, this Agreement, exclusive of its exhibits, appendixes, and schedules; (b) second, the applicable SOW; and (c) third, any exhibits, appendixes, and schedules to this Agreement. **In no event will Provider's end user license agreement or other standard terms and conditions preempt or in any manner supersede this Agreement and corresponding schedules, exhibits, statements of work, or otherwise. Provider warrants that it will not, and has not, presented the City with any documents, contracts, agreements, or covenants of any kind or description which assert that they take precedence over any of the terms of this document or the attachments thereto. Any provision in any document Provider presents to the City which contradicts or is opposed to the terms herein is declared to have been presented by mistake and is of no legal force absent such agreement specifically referencing that the City is knowingly waiving the provisions of Section 14.7 of their Master Services Agreement.**

**14.8 Assignment.** Neither Party, without the prior written consent of the other Party, may assign, transfer, or delegate any or all of its rights or obligations under this Agreement. No assignment will relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

**14.9 No Third Party Beneficiaries.** Except for the Indemnitees, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity, any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

**14.10 Amendment; Waiver.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**14.11 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible. To the extent the Parties cannot agree on the modification to this Agreement, the court will modify this Agreement so as to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**14.12 Audit.** City and City's designated representatives will each have the right to inspect and audit Provider's records in connection with this Agreement. If an audit reveals an overcharge, Provider will promptly reimburse City for the amount of the overcharge and the cost of the audit. Audits will only be conducted with reasonable advanced notice during normal business hours and in a manner so as not to unreasonably interfere with Provider's operations.

**14.13 Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action, or proceeding arising out of, related to, or resulting from this Agreement, the Services, or the Deliverables provided hereunder will be instituted exclusively in the federal courts of the United States located in the City of Denver or the courts of the State of Colorado located in the City of Aurora or the City of Denver, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such court. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party will be entitled to recover its attorneys' fees and court costs from the non-prevailing Party.

**14.14 Equitable Remedies.** Each Party acknowledges that a breach by a Party of Section 8 (Intellectual Property Rights; Ownership), Section 9 (Confidentiality), or Section 10 (Privacy and Data Protection) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

**14.15 Business Continuity and Contingency Plans.** Provider will maintain policies and procedures for contingency and business resumption plans, disaster recovery plans, and proper risk controls for the Services, including the capability to establish a disaster recovery platform at a remote data center (the "Business Continuity Plan") which will, at a minimum, conform to the greater of: (a) the policies and procedures Provider has for its own data; (b) the policies and procedures City has for its own data; or (c) the then current industry standards, but in no event less than the use of reasonable care. A Business Continuity Plan including emergency management and communications, business recovery, and disaster recovery must be in place and tested at least annually. The Business Continuity Plans must be delivered to City on the execution of the first SOW and then no less than annually thereafter or sooner if changes to the plan occur.

**14.16 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the Effective Date, notwithstanding the actual date of execution.

**CITY:**

City of Aurora, Colorado

By: Jeff Lehmann

Name: Jeff Lehmann

Title: Sr. Procurement Agent

**PROVIDER:**

Flock Group, Inc.

By: Mark Smith

Name: Mark Smith

Title: General Counsel

**Notice Address:**

City of Aurora

15151 East Alameda Parkway, 5th Floor

Aurora, CO 80012

Attention: Office of the City Attorney

Email: [hhernand@auroragov.org](mailto:hhernand@auroragov.org)

**Notice Address:**

Flock Safety

1170 Howel Mill Rd., NW Suite 210

Atlanta, GA 30318

Attention: Mark Smith

Email:

*Approved As to Form:*

IT Chief Security Officer Tim McCain

Risk Manager: Renee Pettinato Mosley

Assistant City Attorney: Hanosky Hernandez

Effective Date: March 5, 2024



## **Exhibit A1**

### **AURORA PD, CO SCOPE OF WORK (SOW)**

#### **Introduction:**

This Scope of Work ("SOW") is between 'Aurora PD, CO ("Customer") and Flock Group Inc ("Flock Safety"). This Statement of Work is governed by the Master Service Agreement with Flock Safety and Customer. This SOW defines the scope of the services that Flock Safety will provide to the Customer. This Statement of Work provides definitions and a mutual understanding of the work to be completed.

#### **Scope:**

#### **Description of Services:**

The following services will be provided as part of this Scope of Work. Any services not described herein will require a Project Change Request (PCR) and execution of change order to the associated Master Services Agreement mutually agreed upon, and signed by both parties.

#### **Project Summary:**

Flock Safety will implement 27 Falcon ALPR cameras and 42 Falcon Long Range ALPR cameras in Aurora Colorado.

#### **Research, Planning and Permitting:**

Conduct research and work with Aurora PD to identify locations for LPR cameras to be installed. Placement of cameras provided in RFP for Aurora PD, CO. All locations are to be approved by Aurora PD, CO. Submit for permits with property/right-of-way owners.

#### **Deployment:**

Install cameras at desired and permitted locations. All equipment, parts and labor will be provided by Flock Safety. Deployments shall include approved traffic control/plans when applicable for work in any City of Aurora right-of-way as well as notice to Public Works staff 2-3 weeks in advance in accordance with Addendum No. 1, Question 2 (Q2), Answer 2 (A2) to the RFP.

#### **Testing:**

Conduct testing of the application and the camera system to confirm performance.  
Perform usability testing to ensure an intuitive user experience.  
Test compatibility across various devices.

#### **Training:**

Provide training on using the Flock Safety Web Portal including Search, Custom Hotlist, Lookup, Agency sharing, and Insights for administrators.  
Training will be provided both on-site and remotely (as needed) throughout the program.

#### **Maintenance and Support:**

Provide ongoing maintenance and support services post-deployment.  
Address any technical issues or bugs reported by users.  
Release periodic updates with new features and enhancements.

Project Management will be handled by Aaron Montez and permitting will be handled by Michael Franzen.

**Deliverables:**

Finalized Data Driven Camera Map approved by Aurora PD

Mobile application for iOS and Android platforms.

Unlimited user licenses for Aurora PD employees access to Flock Safety Portal.

Maintenance and support for the life of the contract.

27 Falcon ALPR's

42 Falcon Long Range Cameras.

**Out of Scope:**

- Physical installation of any product not supplied by Flock.
- Software changes/configurations outside of Flock.
- Power ran to any location.
- Changing camera location. Changes to camera location prior to installation will necessitate the process to restart.

**Timeline:**

Research and Planning: Completed

Design: Completed

Permitting: 30 days lead time per Public Works + however long it takes the public improvement permit to process

Deployment: Once permit is approved, 6 to 10 weeks

Testing: All cameras are tested for functionality and quality pictures prior to leaving the installed location.

Maintenance and Support: Ongoing, life of contract

**Budget:**

Total project budget: \$350,500 for Year 1

- 42 Falcon Long Range Cameras @ \$5000.00 per camera/year = \$210,000.00
- 27 Falcon Solar Cameras @\$3000.00 per camera/year = \$81,000.00
- 42 1-time install fee for Long Range Cameras @\$1000.00 per camera = \$42,000.00
- 27 1-time install fee for Falcon Solar Cameras @\$650.00 per camera = \$17,550

Years 2-5 (depending on how many additional years Aurora wanted) would be \$291,000.00/year

Payment milestones to be determined upon the MSA agreement.

## **Flock Safety + CO - Aurora PD**

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Flock Group Inc.  
1170 Howell Mill Rd, Suite 210  
Atlanta, GA 30318

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MAIN CONTACT:  
Mike McManus  
mike.mcmanus@flocksafety.com

**flock safety**



EXHIBIT A  
**ORDER FORM**

|                         |                                             |                    |                                               |
|-------------------------|---------------------------------------------|--------------------|-----------------------------------------------|
| Customer:               | CO - Aurora PD                              | Initial Term:      | 12 Months                                     |
| Legal Entity Name:      | CO - Aurora PD                              | Renewal Term:      | 12 Months                                     |
| Accounts Payable Email: |                                             | Payment Terms:     | Net 30                                        |
| Address:                | 15001 E Alameda Pkwy Aurora, Colorado 80012 | Billing Frequency: | Annual Plan - First Year Invoiced at Signing. |
|                         |                                             | Retention Period:  | 30 Days                                       |

**Hardware and Software Products**  
Annual recurring amounts over subscription term

| Item                      | Cost     | Quantity | Total        |
|---------------------------|----------|----------|--------------|
| Flock Safety Platform     |          |          | \$291,000.00 |
| Flock Safety LPR Products |          |          |              |
| Flock Safety Falcon ®     | Included | 27       | Included     |
| Flock Safety Falcon ® LR  | Included | 42       | Included     |

**Professional Services and One Time Purchases**

| Item                                                            | Cost       | Quantity | Total       |
|-----------------------------------------------------------------|------------|----------|-------------|
| One Time Fees                                                   |            |          |             |
| Flock Safety Professional Services                              |            |          |             |
| Professional Services - Standard Implementation Fee             | \$650.00   | 27       | \$17,550.00 |
| Professional Services - Advanced Implementation Fee (Falcon LR) | \$1,000.00 | 42       | \$42,000.00 |

|                            |              |
|----------------------------|--------------|
| Subtotal Year 1:           | \$350,550.00 |
| Annual Recurring Subtotal: | \$291,000.00 |
| Estimated Tax:             | \$0.00       |
| Contract Total:            | \$641,550.00 |

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "Renewal Term") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**Billing Schedule**

| Billing Schedule              | Amount (USD) |
|-------------------------------|--------------|
| Year 1                        |              |
| At Contract Signing           | \$350,550.00 |
| Annual Recurring after Year 1 | \$291,000.00 |
| Contract Total                | \$641,550.00 |

\*Tax not included

Product and Services Description

| Flock Safety Platform Items | Product Description                                                                                                                                                          | Terms                                                                             |
|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Flock Safety Falcon ®       | An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.                                            | The Term shall commence upon first installation and validation of Flock Hardware. |
| Flock Safety Falcon® LR     | A long-range infrastructure-free license plate reader camera designed for high speed vehicles that utilizes Vehicle Fingerprint® technology to capture vehicular attributes. | The Term shall commence upon first installation and validation of Flock Hardware. |

| One-Time Fees                                       | Service Description                                                                                                                                                                                            |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Installation on existing infrastructure             | One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.       |
| Professional Services - Standard Implementation Fee | One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief. |
| Professional Services - Advanced Implementation Fee | One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.       |

FlockOS Features & Description

| FlockOS Features | Description |
|------------------|-------------|
|------------------|-------------|

## **EXHIBIT B**

### **Use of Third Parties**

City requires all persons or entities providing Services or Deliverables to City to disclose any third parties that may be used in the provision of Services or the creation of the Deliverables ("Third Party Providers"). Third Party Providers may include independent contractors, specialists, or other product or service vendors, which are used to facilitate or perform the Services or create the Deliverables on behalf of Provider, in part or in total, or provide operational support of the underlying systems that could result in direct or indirect access, transmission, transfer, or processing of City Data, City Systems, or Personal Data.

Third Party Providers' personnel and technology location will be disclosed by Provider at the time of the execution of the MSA, the execution of any SOW, and within 90 days of entering any service relationships throughout the Term and as long as Provider maintains any City Data, City Systems, or Personal Data. Provider may not provide Services or create Deliverables, house systems performing Services or creating Deliverables, access City Data or City Systems, conduct maintenance on systems used in performing the Services or creating the Deliverables, or develop applications used in the performance of Services outside the United States; the use of Third Party Providers that reside outside the United States is prohibited without City's prior written approval.

Third Party Providers will comply with the confidentiality, security, and privacy requirements within this Agreement, and any applicable SOW. Third Party Providers will also ensure that any of their third party providers comply with such requirements. City reserves the right to audit any Third Party Provider and any third party provider to such Third Party Providers.

Provider will complete the Declaration of Third Party Provider Performance found in this **Exhibit B** to provide official notice of use of Third Party Providers. The form will be submitted by email to [ThirdPartyAssistance@auroragov.org](mailto:ThirdPartyAssistance@auroragov.org).

### Declaration of Third Party Provider Performance

This Declaration of Third Party Provider Performance is delivered in connection with that certain Master Services Agreement between City of Aurora and Flock Safety ("Provider") effective as of LAST SIGNATURE, (the "Agreement").

Provider submits this as its formal declaration of any legal or natural persons (each a "Third Party Provider") that will directly provide services or technology, on behalf of the Provider, which will access, store, process, or transmit regulated or confidential City information (including, without limitation, City Data, City Systems, or Personal Data) in the performance of the Services or creation of the Deliverables under the Agreement or any applicable SOW entered into in connection with the Agreement.

Additionally, Provider will disclose any Third Party Provider who will provide operational and administrative support of the technology used in the performance of the Services or creation of the Deliverables, which could result in direct or indirect access, transmission, transfer, or processing of such regulated or confidential information (including, without limitation, City Data, City Systems, or Personal Data).

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Function/Service Performed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Function/Service Performed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Function/Service Performed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Function/Service Performed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Function/Service Performed: \_\_\_\_\_

**EXHIBIT C****INFORMATION SECURITY REQUIREMENTS AGREEMENT**

**THIS INFORMATION SECURITY REQUIREMENTS AGREEMENT** (this "ISR") is entered between the City of Aurora ("City") and the service provider as more particularly described on the signature page to this ISR ("Provider") and is made effective as of the date set forth on the signature page of this ISR (the "ISR Effective Date"). This ISR is an exhibit to that certain Master Services Agreement (the "MSA") effective as of LAST SIGNATURE under which Provider may be engaged from time to time to provide Services to City. Any capitalized terms not defined herein will have the meaning ascribed in the MSA.

Provider will comply, and will ensure that its Provider Personnel, Permitted Subcontractors, and any Third Party Provider (together Provider, Provider Personnel, Permitted Subcontractors and Third Party Providers, "Provider Parties") comply, with the information security and privacy requirements set forth herein (including applicable appendix) (collectively, the "Requirements").

Provider Parties will comply with these Requirements at all times during the Term, and thereafter until such time as all parties performing services are no longer in possession of, or have access to City Data (as defined below) or City systems.

**1. STANDARD OF CARE**

Provider acknowledges and agrees that, in the course of its engagement by City, Provider may receive or have access to City's Confidential Information, which includes its business processes, security, technology infrastructure, employee and citizen identifiers, and any regulated or sensitive data ("City Data"). Provider Parties will comply with the Requirements in their collection, receipt, transmission, storage, disposal, use, and disclosure of City Data and Provider will be fully responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use, and disclosure of City Data under their control or in their possession. Provider agrees and covenants that Provider Parties will keep and maintain all City Data in confidence, according to the obligations set forth in the MSA and this ISR.

**2. SECURITY REQUIREMENTS**

**2.1 Use of City Data.** Provider Parties will use City Data, even if anonymized, solely for the purpose of supporting Provider's performance of the Services and production of applicable Deliverables. Upon discovery or notice of any unauthorized use or processing of City Data, Provider will promptly notify City in writing and take immediate steps to stop such unauthorized use or processing and coordinate with City regarding Provider's remediation of such unauthorized use or processing.

**2.2 Security Measures and Information Security Programs.** Provider Parties will use security measures at least as stringent and protective as is standard in Provider's industry for its computer systems and information storage facilities in the United States to safeguard City Data and in no event will such security measures be less protective than those used by City. Provider represents and warrants that it has adopted, documented, implemented, and will adhere to a comprehensive written information security program for maintaining security controls to protect City Data against accidental, unauthorized, or unlawful destruction, loss, alteration, disclosure, and access, and against all other unlawful activities. Provider's information security program will include rules on the collection, maintenance (including access rights), transmittal, and disposal of any third party data, including City Data, and will include training, oversight, tests for vulnerabilities, system checks, and measures to prevent and detect unauthorized access. Provider will conduct security awareness training of all Provider Parties and retain verification of attendance. Provider will, upon request, provide City copies of its information security program, security documents, policies, procedures, and compliance information. Provider will notify City in writing of any material changes to the security measures, information security program, infrastructure, vendors, solutions, or processes used to provide security or services to Provider Parties or to City, or any City designee, and will provide City access to verify no such changes have occurred.

**2.3 Infrastructure Security.** Provider will install and maintain anti-virus software, apply all system patches and updates provided from primary vendors for operating systems, middleware, and hardware and, to the extent possible, use real time protection features. Provider will not introduce any viruses, time or logic bombs, Trojan horses, worms, timers, clocks, trap doors, or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down City's system or any component of City's system, including, without limitation, its security or data. In the event a virus or similar issue is found to have been introduced into City's system by any Provider Party, Provider will, at its sole cost and expense: (a) use commercially reasonable efforts to reduce or eliminate the effects of the virus or similar issue; and (b) if the virus or similar issue causes a loss of operational efficiency or loss of data, mitigate, restore and reimburse City and any third parties for all such losses.

**2.4 Encryption and Secure Transmission of Data.** Provider represents and warrants that all electronic City Data in storage with any Provider Party will reside behind an appropriate and secure firewall and will retain any data storage encryption in place at the time of service commencement within the respective environment. City Data in electronic form must be transmitted by a secure, private, point-to-point network connection, or by communications protected by encryption. In no case will City Data be transmitted by a public network (internet, wireless, cellular, GSM, satellite, etc.) without being encrypted.

**2.5 Destruction and Return of City Data.** Within 30 days of the completion of the Services and delivery of the Deliverables (or such earlier time as City requests) and at City's discretion, Provider Parties will return to City, or securely destroy, all City Data in such Provider Parties' possession, custody, or control in such a manner as to eliminate the possibility that City Data is capable of being accessed, read, or reconstructed. In addition, Provider will provide to City a written certification by an officer of Provider confirming that such return or destruction occurred. If a Provider Party cannot destroy all City Data as required herein due to recordkeeping law or the pendency of litigation requiring it to retain City Data in its existing format, Provider warrants that it: (a) will promptly notify City; (b) will continue to protect City Data as agreed to in this ISR; (c) will not use or disclose City Data; (d) will ensure the confidentiality of City Data while it is retained; and (e) will comply with its destruction obligations once the legal prohibition on destruction has expired.

### **3. PHYSICAL AND ENVIRONMENTAL SECURITY**

**3.1 Facility Security Measures.** Provider will implement, or cause to be implemented, appropriate security measures at any Provider Party facilities where City's Data or Confidential Information is processed or stored. Such security measures must include, at a minimum: (a) documented disaster recovery plan for accessing the facility and City Data, and restoring City Data if needed, in the case of an emergency or crisis; (b) reasonable environmental safeguards designed to protect systems storing City Data from smoke, heat, water, fire, humidity, power surge, or other such potential damage; (c) appropriate controls designed to ensure that only authorized Personnel are allowed physical access to the facility; and (d) regular backup of City Data. Provider will promptly supply copies of City Data in a format requested by City, upon City's request. Provider will use all reasonable measures to prevent theft or damage to Provider systems or storage media containing City Data, including, without limitation, protecting systems or devices that contain un-encrypted data with physical barriers such as locked cabinet, floor to ceiling room, or secured cage. Provider will not connect any device or technology to any City system, network, or infrastructure that has not been provided by City or approved by City in writing prior to such connection.

**3.2 Confidentiality and Security Agreement.** Any Provider Party who requires on-site access at City premises or who requires access to City network or physical facilities will execute the Provider Personnel Confidentiality and Security Agreement, attached as **Appendix A**.

### **4. SECURITY INCIDENT AND DATA BREACH PROCEDURES**

**4.1 Security Incident or Data Breach.** If any Provider Party suspects, discovers, or is notified of: (a) any actual or suspected unauthorized or accidental, access, use, loss, or disclosure of any City Data which could reasonably be expected to compromise the integrity and confidential nature of such data; or (b) any actual or suspected breach of any Provider Party's security or information systems or the systems of City under management by any Provider Party that could reasonably be expected to either (i) expose any City Data to such unauthorized or accidental access or use, or (ii) cause harm, damage, or negatively affect the function or performance of City systems, network, or infrastructure ("Security Incident") or unauthorized acquisition of data that compromises the security,

confidentiality, or integrity of City Data maintained by an individual or a commercial entity ("Data Breach"), Provider will immediately notify City's Information Security Officer (security@auroragov.org) of such Security Incident or Data Breach, in writing, and in no event, later than 24 hours after Provider suspects, discovers, or is notified of, such Security Incident or Data Breach. Provider will provide regular status reports to keep City apprised of the matter and will respond timely to additional requests for information from City.

**4.2 Notice Contents.** Such notification will include: (a) the specific details of the Security Incident or Data Breach; (b) a thorough description of City Data that may have been accessed, or affected; and (c) the effect of the Security Incident or Data Breach on City Data. In addition, Provider will provide City with the corrective action taken or to be taken by Provider as well as the identity of each affected individual, as soon as such information can be determined or collected. Provider will provide timely updates on the foregoing details and any other information City may reasonably request relating to the Security Incident or Data Breach. Provider will not release or publish any filing, communication, notice, press release, or report concerning the Security Incident or Data Breach without City's prior written approval (except where it is required to do so by law and then only following written notice to City). At its sole expense, Provider will promptly take all appropriate corrective actions and will cooperate with City in all ongoing, reasonable, and lawful efforts to mitigate or rectify such Security Incident or Data Breach (including, without limitation, cooperation in complying with applicable breach notification laws).

**4.3 Indemnification.** In addition to other remedies set forth in this ISR and the MSA, Provider will indemnify and hold City harmless from and against any and all losses, liabilities, claims, disputes, judgments, settlements, costs, and expenses of any nature whatsoever (including, without limitation, reasonable fees and disbursements for attorneys and other professional advisors, expert witnesses, and court costs) related to, arising out of, or resulting from, an Information Security Incident or Data Breach, including, without limitation, any breach notification costs, credit monitoring, and costs associated with a call center.

## **5. PROVIDER PARTIES**

Provider Parties will each only access those systems, applications, or data which such party is expressly authorized by City to access, even if the technical controls in the system or application do not prevent access to those data or functions outside of City's authorization. Where City does consent to Provider engaging a third party to carry out any part of the Services or create any of the Deliverables, Provider will impose in any agreement with such third party provisions in favor of City which are at least equivalent to those in this ISR and the MSA. Provider at all times remains solely responsible for all obligations under this ISR and the MSA, even in the event such obligations have been delegated to a Provider Party. Provider will not permit City Data to be transferred to any third party that does not comply with all requirements under this ISR and the MSA, unless the transfer is authorized in writing by City.

## **6. AUDIT**

City, and its designee, will have the right to monitor any or all Provider Parties' compliance with the terms of this ISR. City, and its designee, will have the right to inspect any and all Provider Parties' facilities, equipment, information security policies, procedures, and records. Provider will, and will compel the Provider Parties to, respond to any inquiries from City or its designee related to compliance with this ISR, the MSA, including, without limitation, the information security programs, privacy, and data security. City, or City's designee, may conduct periodic security audits as to the procedures and safeguards used by Provider Parties to protect City Data. City may, in its sole discretion, agree to an alternative documentation process in lieu of an audit (i.e. ISO27001, SSAE16, or PCI DSS). Provider will promptly cooperate with audit requests by City, or its designee. Upon City's, or its designee's, request, Provider will supply evidence of Provider Parties' compliance with the terms of this ISR, including supporting certifications, if applicable. Provider agrees that the conditions of this section also apply to all Provider Parties that have direct or indirect access to City Data, City systems, or City infrastructure.

## **7. TERMS AND CONDITIONS; CLICK THROUGH AGREEMENTS**

Provider agrees that the terms of this ISR will override any unsigned or click-through agreement with any Provider Party as it relates to this ISR, the MSA, City Data, City systems, City infrastructure, the Services, and the Deliverables.

**8. SUBPOENAS AND LEGAL PROCEEDINGS**

8.1 Subject to applicable law, Provider shall notify City immediately in writing of any subpoena or other judicial or administrative order by a court, tribunal, litigant, or government authority seeking access to or disclosure of City Data covered by this ISR. Prior to the release of any such City Data and subject to applicable law, City shall have the right to challenge and defend subpoena enforcement proceedings or motions to compel in lieu of and on behalf of Provider. Provider shall provide reasonable cooperation to City in connection with such defense.

**9. INDEMNIFICATION**

Provider will, at its sole cost and expense, indemnify, defend, and hold harmless City, its affiliates, and their respective directors, officers, employees, and agents, from and against any and all claims, allegations, suits, and proceedings made or brought by any third party, and all damages, losses, costs, expenses, settlements administrative fines, and other liabilities in connection therewith (including, without limitation, reasonable fees and disbursements for attorneys and other professional advisors, expert witnesses, and court costs), related to, arising from, or resulting from a breach of Provider's obligations, representations, warranties, covenants, or agreements under this ISR. Notwithstanding anything to the contrary contained in the MSA, no limitation of liability contained therein (including, without limitation, any cap on damages or any waiver of consequential, incidental, or other types of damages) shall apply to third-party claims that are subject to indemnification under this ISR.

**IN WITNESS WHEREOF**, the Parties have executed this Information Security Requirement Agreement to be effective as of the ISR Effective Date, notwithstanding the actual date of execution.

**CITY:**

City of Aurora, Colorado

By: Tim McCain

Name: Tim McCain

Title: Chief Information Security Officer

**Notice Address:**

City of Aurora

15151 East Alameda Parkway, 5th Floor

Aurora, CO 80012

Attention: Office of the City Attorney

Email: [hhermand@auroragov.org](mailto:hhermand@auroragov.org)

**PROVIDER:**

Flock Group, Inc.

DocuSigned by:

By: Mark Smith

Name: Mark Smith

Title: General Counsel

**Notice Address:**

Flock Safety

1170 Howell Mill Rd., NW Suite 210

Atlanta, GA 30318

Attention: Mark Smith

Email:

ISR Effective Date: 02/28/2024

## Appendix A

### **Provider Party Confidentiality and Security Agreement**

Any Provider Party who is on-site at City premises or who requires access to City network will sign the following Provider Party Confidentiality and Security Agreement, which will be collected and maintained by City, before being granted access to any system or data.

#### **1. GENERAL PERSONNEL REQUIREMENTS**

1.1 I understand that I should have no expectation of privacy when using City's information systems. City may log, access, review, and otherwise utilize information stored on or passing through its systems, including email, in order to manage systems and enforce security.

1.2 I understand that violation of this agreement may result in disciplinary action, up to and including loss of privileges, and termination of authorization to work within the City facility or with City Data.

#### **2. PROTECTING CONFIDENTIAL DATA**

2.1 I will not disclose or discuss any City Data with others who do not have a need to know it. I will not take media or documents containing City Data to my home or other offsite location unless specifically authorized to do so as part of my job.

2.2 I will not publish or disclose any City Data to others using personal email, or to any websites, or through blogs or mobile apps, such as, without limitation, Facebook, Twitter, Instagram, or other social media. I will only use such communication methods when explicitly authorized to do so in support of City business and within the permitted uses of City Data as governed by applicable laws and regulations.

2.3 I will not make any unauthorized transmissions, inquiries, modifications, or purges of City Data.

2.4 I will not transmit City Data outside City's internal network unless I am specifically authorized to do so as part of my job responsibilities. If I do transmit City Data outside of City using email or other electronic communication methods, I will ensure that City Data is encrypted according to City's information security standards, which City will provide to me upon request.

2.5 I will not copy or store City Data on removable media or portable devices such as laptops, cell phones, thumb drives, external hard drives, or any other means, unless specifically required to do so by my job. If I do copy or store data on removable media or portable devices, I will encrypt the data while it is on the media according to City's information security standards, which City will provide upon request.

#### **3. ABIDING BY APPROPRIATE SECURITY CONTROLS**

3.1 I will only access or use City systems or devices I am officially authorized to access, and will not demonstrate the operation or function of systems or devices to unauthorized individuals.

3.2 I will not bypass or attempt to bypass City security controls.

3.3 I understand that I will be assigned a unique identifier to track my access and use of City Data and that the identifier is associated with my personal data provided as part of the initial or periodic credentialing and employment verification processes ("User-ID").

3.4 I will: (a) use only my City-assigned User-ID, password, token, or badge; (b) use only Provider-approved, licensed software.

3.5 I will never: (a) allow another person to use any assigned User-IDs, such as passwords, PINs, badges, or access codes; (b) use tools or techniques to break or exploit security measures; or (c) connect unauthorized systems or devices to the City network.

3.6 I will practice good workstation security hygiene, such as locking my computer when away from my desk, using screen savers with activated passwords, positioning screens away from public view, and such other security measures, as applicable.

3.7 I will immediately notify my City contact or the City IT Client Services if: (a) my password has been seen, disclosed, or otherwise compromised; (b) media with City Data stored on it has been lost or stolen; (c) I suspect a virus infection on any system; (d) I am aware of any activity that violates this agreement, or any privacy or security policies; or (e) I am aware of any other incident that could possibly have any adverse impact on City Data or City systems.

**4. UPON TERMINATION**

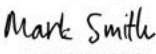
4.1 I agree that my obligations under this Agreement will continue after termination of my employment, expiration of my contract or this agreement, or my relationship ceases with the Provider Party (i.e. my employer).

4.2 Upon termination, I will immediately return any documents or media containing City Data to Provider.

4.3 I understand that I have no right to any ownership interest in any City Data accessed or created by me during and in the scope of my relationship with City.

I hereby agree to the terms of this Provider Party Confidentiality and Security Agreement.

Personnel Signature:

DocuSigned by:  
  
AG5C934454C24F3...

Printed Name:

Mark Smith\_\_\_\_\_

Provider Party:

Flock Group, Inc.\_\_\_\_\_

Date:

\_\_\_\_\_

## Exhibit D

### Insurance Requirements

During the term of this Agreement and until final acceptance by the City of all work covered by the Purchase Order or contract, the Contractor providing goods or services under this agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance indicated below:

- A. **Commercial General Liability Insurance.** The Contractor shall maintain commercial general liability insurance covering all operations by or on behalf of the Contractor on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include: Contractual Liability, a Waiver of Subrogation and, if appropriate for the scope of services, Products and Completed Operations. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.  
  
Minimum limits:  
 \$2,000,000 each occurrence  
 \$4,000,000 general aggregate  
 \$4,000,000 products and completed operations
- B. **Umbrella/Excess Liability Insurance.** The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in this agreement which is as least as broad as the underlying policies. Policy limits with minimum limits of not less than Two Million Dollars (\$2,000,000) per occurrence. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.
- C. **Commercial Automobile Liability Insurance.** The Contractor shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.
- D. **Workers' Compensation and Employers Liability Insurance.** The Contractor shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Contractor shall maintain Employers Liability Insurance with minimum limits of: \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease each employee and \$1,000,000 bodily injury disease aggregate.
- E. **Network Security (Cyber) and Privacy Liability Insurance.** Contractor shall provide this insurance coverage with minimum limits of Two Million Dollars (\$2,000,000) per claim, covering third party claims and losses with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.

The retroactive coverage date shall predate the effective date of this contract. Contractor shall maintain an extended reporting period for not less than two (2) years after termination of this Agreement.

F. **Subcontractor's Insurance** It shall be the responsibility of the Contractor to ensure that subcontractors maintain:

1. **Commercial General Liability Insurance** with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate and shall name the City of Aurora as an additional insured; and
2. **Network Security (Cyber) and Privacy Liability Insurance.** Contractor shall provide this insurance coverage with minimum limits of Two Million Dollars (\$2,000,000) per claim, covering third party claims and losses with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information, direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.
3. **Commercial Automobile Liability Insurance.** The Contractor shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.
4. **Workers' Compensation and Employers Liability Insurance.** The Contractor shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, the Contractor shall maintain Employers Liability Insurance with minimum limits of: \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

The Contractor is responsible for verifying that the Subcontractor's insurance is in effect prior to commencement of work and throughout the time that the Subcontractor performs work on the project. Any Subcontractor which ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured.** The Contractor shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement for the Commercial General Liability and Excess Liability insurance policies and the certificate of insurance will include this specific language along with a copy of the endorsement.

**Certificates of Insurance.** Upon the execution of this Agreement, the Contractor shall provide certificates of insurance to the City of Aurora demonstrating that at the minimum coverages required herein are in effect. Contractor agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Contractor's or its Subcontractor's coverage is renewed at any time prior to completion of the services, the Contractor shall be responsible for obtaining updated insurance certificates for itself and such Subcontractors from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- VII and the minimum A.M. Best rating of each excess insurer shall be A- VII. The Contractor shall provide copies of insurance certificates and applicable endorsements as proof of insurance coverage to the City Risk Manager.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City of Aurora in response to the particular circumstances giving rise to the contract. **The Contractor's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** The Contractor shall maintain professional liability insurance with minimum limits of Two Million Dollars (\$2,000,000) per claim, covering those claims which arise out of the negligent acts or omissions of the Contractor, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Contractor's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days after renewal.

Form No. 410-33