

**VILLAGE OF VERNON HILLS  
RESOLUTION 2020-006**

**A RESOLUTION APPROVING A PURCHASE ORDER AND TERMS AND  
CONDITIONSBETWEEN THE VILLAGE OF VERNON HILLS AND FLOCK GROUP,  
INC., FOR THE INSTALLATION, MAINTENANCE AND USE OF AUTOMATIC  
LICENSE PLATE READERS**

**WHEREAS**, the VILLAGE OF VERNON HILLS, Lake County, Illinois (the “Village”) is a home rule municipality, pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, the Village and its Police Department place a high priority on utilizing effective techniques to aid in the investigation and deterrence of crime in the Village, including the use of advancing technology in the area of law enforcement, to ensure the safety of the Village’s residents and businesses; and

**WHEREAS**, the Village desires to enhance its ability to detect and deter crime and aid in criminal investigations by the installation and use of automatic license plate readers within the Village; and

**WHEREAS**, the installation, maintenance and use of these devices is achieved by entering into an agreement with Flock Group, Inc., a nationally-known provider of these services to the law enforcement community; and

**WHEREAS**, the Village is empowered to enter into such an agreement, and to approve the expenditure of funds for the services performed by the Flock Group, Inc., pursuant to its home rule powers and contracting authority provided by Article VII, Section 6 of the Illinois Constitution of 1970, and finds that entering into this agreement is in the best interests of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

**SECTION 2:** The President and Board of Trustees of the Village Vernon Hills authorize the approval of the attached “SaaS Services Agreement Order Form” (the “Order Form”), (**Exhibit “A”**), and the attached “Terms and Conditions for Flock Safety” (the “Terms and Conditions”), (**Exhibit “B”**) to be entered into with Flock Group, Inc. (the “Vendor”) for the installation, maintenance and use of automatic license plate readers.

**SECTION 3:** The President and Board of Trustees of the Village of Vernon Hills authorize and direct that the Village President, the Village Clerk, the Village Manager, the Chief

of Police, the Vendor and the Village Attorney, or their designees, to execute said Order Form and Terms and Conditions, and to execute and deliver all other instruments, payments and documents that are necessary to fulfill the Village's obligations under the documents.

Dated this 18<sup>th</sup> day of February, 2020

Adopted by roll call vote as follows:

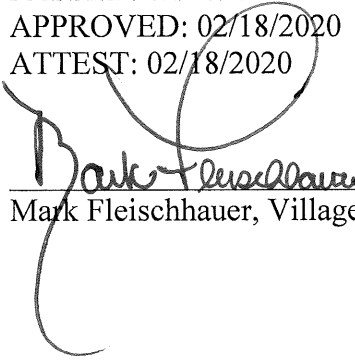
AYES: 7 - Marquardt, Schultz, Brown, Koch, Takaoka, Oppenheim, Byrne

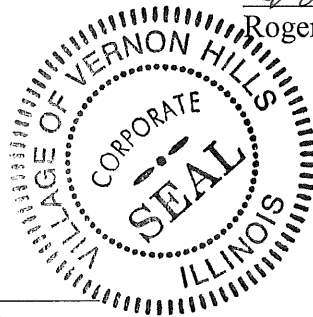
NAYS: 0 - None

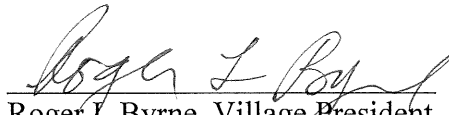
ABSENT AND NOT VOTING: 0 - None

Adopted this 18<sup>th</sup> day of February, 2020, by the President and Board of Trustees of the Village of Vernon Hills, Illinois.

PASSED: 02/18/2020  
APPROVED: 02/18/2020  
ATTEST: 02/18/2020

  
Mark Fleischhauer, Village Clerk



  
Roger L. Byrne, Village President

**EXHIBIT A**

**SAAS SERVICES AGREEMENT ORDER FORM**

# FLOCK GROUP INC.

PO Box 207576

Dallas, TX 75320-7576

## SAAS SERVICES AGREEMENT ORDER FORM

This Order Form together with the SaaS Terms (as defined herein) describe the relationship between Flock Group Inc. ("Flock") and the customer identified below ("Customer") (each of Flock and Customer, a "Party"). This order form ("Order Form") hereby incorporates and includes the "Terms and Conditions" located at <https://www.flocksafety.com/legal/terms-and-conditions> (the "SaaS Terms") which describe and set forth the general legal terms governing the relationship (collectively, the "Agreement" ). The SaaS Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

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

Customer:	Vernon Hills Police Department	Contact:	Deputy Chief Patrick Zimmerman
Address:	290 Evergreen Drive Vernon Hills, IL 60061	Phone:	847-247-4890
		E-Mail:	pzimmerman@vhills.org
Usage Fees:	\$20,000.00 per Year (the "Payment Period")	Initial Term:	24 Months
Number of Cameras:	10	Renewal Term:	24 Months
Installation Fee (one-time)	\$0	Billing Contact:	
Pole Fee (one-time)	\$0	(if different than above)	
		Expected Payment Method:	

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the SaaS Terms located at <https://www.flocksafety.com/legal/terms-and-conditions>.

The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc.

Order Form  
Vernon Hills Police Dept  
1134445128

**Flock Group Inc**

By:



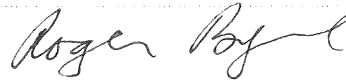
Name: Jonathan Love

Title: Head of Finance

Date: 2/20/2020

**Customer Name:**

By:



Name: Roger L. Byrne

Title: Village President

Date: 02/20/2020

**EXHIBIT A****Statement of Work**

Installation of Flock Camera on existing pole or Flock-supplied pole if required

**EXHIBIT B**

**TERMS AND CONDITIONS FOR FLOCK SAFETY**

# Terms and Conditions for Flock Safety

## 1. DEFINITIONS

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

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

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

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

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

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

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

1.7 “**Hardware**” shall mean the Flock Gate Cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “**Hardware**” excludes the Embedded Software.

1.8 “**Installation Services**” means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.

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

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

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

## **2. SERVICES AND SUPPORT**



**2.1 Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term, solely for the Authorized End Users. The Footage will be available for Customer to access via the Web Interface for 30 days. Authorized End Users will be required to sign up for an account, and select a password and user name ("**User ID**"). Flock will also provide Customer the Documentation to be used in accessing and using the Services. Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which make the Services available to Customer and Authorized End Users. Flock will pass-through any warranties that Flock receives from its then current third party service provider to the extent that such warranties can be provided to Customer. Customer agrees to comply with any acceptable use policies and other terms of any third party service provider that are provided or otherwise made available to Customer from time to time.

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

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

**2.4 Usage Restrictions.** Customer will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (vi) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vii) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (viii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under Sections 2.1, 2.2, or 2.3.

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

**2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; or (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Customer to access the Flock IP (each such suspension, in accordance with this

Section 2.6, a “***Service Suspension***”). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer (including notices sent to Flock’s registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Application Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer or any Authorized End User may incur as a result of a Service Suspension, unless the events giving rise to the Service Suspension are attributable to the negligence or intentional acts of Flock or its agents or employees.

## **2.7 Installation Services.**

**2.7.1 Designated Locations.** Prior to performing the physical installation of the Units, Flock shall advise Customer on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. While Flock will provide advice regarding the location of positioning of such Units, Customer will have the ultimate decision regarding the location, position and angle of the Units (each Unit location so designated by Customer, a “***Designated Location***”). Due to the fact that Customer selects the Designated Location, Flock shall have no liability to Customer resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations. After an installation plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the installation plan driven by a Customer's request will incur a \$250 charge in addition to any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, changes to heights of poles.

**2.7.2 Customer's Installation Obligations.** Customer agrees to allow Flock and its agents reasonable access to the designated installation locations at all reasonable times upon reasonable notice for the purpose of performing the installation work (together with the preceding sentence, the “***Customer Installation Obligations***”). It is understood that the Installation Fees do not include any permits or associated costs, any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or any other services performed in connection therewith and that Customer shall be solely responsible for the foregoing. Customer represents and warrants that it has all

necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

*2.7.3 Flock's Installation Obligations.* The Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time the Designated Locations are selected by Customer. Following the initial installation of the Hardware, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units. Customer understands and agrees that the Services will not function without the Hardware.

*2.7.4 Security Interest.* The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Customer agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Customer default in any payment for the Services or any part thereof, then Customer authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

**2.8 Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Customer and shall be paid promptly upon billing. No additional work shall be completed, or expenses incurred by Flock as related to the discovery or presence of hazardous materials until Flock notifies the Customer of the proposed scope of additional services and the cost for same, in writing, and the Customer agrees to the authorization of the additional services and expenses, in writing.

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

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

**3.1 Customer Obligations.** Customer agrees to provide Flock with accurate, complete, and updated registration information. Customer may not select as its User ID a name that Customer does not have the right to use, or another person's name with the intent to impersonate that person. Customer may not transfer its account to anyone else without prior written permission. Customer will not share its account or password with anyone, and must protect the security of its account and password. Customer is responsible for any activity associated with its account. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Customer will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Customer facilities and Customer equipment, as well as by means of assistance from Customer personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

**3.2 Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Customer hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing, Customer's Installation Obligations, or otherwise from Customer's use of the Services, Hardware and any Software, including any claim that such

actions violate any applicable law or third party right. Although Flock has no obligation to monitor Customer's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

**3.3 Flock Representations and Warranties.** Flock agrees to defend, indemnify and hold harmless Customer, including its elected or appointed officials, employees, and agents against any and all claims, loss, damage, injury, liability, and court costs and attorney's fees incident thereto, including any claims made by employees of Flock or any of their third parties, as well as all other persons, resulting directly or indirectly from the services covered by this contract or the equipment used in connection therewith, that are attributable to the negligence or intentional acts of Flock. In no instance shall Flock be held responsible for any liability, claim, demand, or cause of action attributable solely to the negligence or intentional acts of the Customer.

## **4. CONFIDENTIALITY; CUSTOMER DATA**

**4.1 Confidentiality.** Each Party (the "*Receiving Party*") understands that the other Party (the "*Disclosing Party*") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "*Proprietary Information*" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("*Customer Data*"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Customer alerts, such as when a car exits Customer's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this

Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

**4.2 Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Flock to provide the Services to Customer, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Customer Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Customer, Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

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

**4.4 Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data and other information relating to the provision, use and performance of various

aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom). Customer acknowledges that Flock will be compiling anonymized and/or aggregated data based on Customer Data input into the Services (the “**Aggregated Data**”). Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes in connection with the Services and other Flock offerings, and (ii) disclose the Customer Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

## **5. PAYMENT OF FEES**

**5.1 Fees.** Customer will pay Flock the first Usage Fee and the Installation Fee (the “Initial Fees”) as set forth on the Order Form on or before the 7th day following the Effective Date of this Agreement. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Customer shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each Payment Period. All payments will be made by either ACH, check, or credit card.

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



**5.3 Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be processed and paid by Customer in conformance with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq). Unpaid amounts under this Act are subject to all expenses of collection, and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.

## **6. TERM AND TERMINATION**

**6.1 Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). Following the Initial Term, this Agreement will automatically renew for successive renewal terms of the length set forth on the Order Form (each, a "**Renewal Term**", and together with the Initial Term, the "**Service 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.

**6.2 Customer Satisfaction Guarantee.** At any time during the agreed upon term, a customer not fully satisfied with the service or solution may self-elect to terminate their contract. Self-elected termination will result in a one-time fee of up to \$500 per camera to cover equipment removal costs. Upon self-elected termination, a refund will be provided, pro-rated for any fees paid for the remaining Term length set forth previously. Self-termination of the contract by the customer will be effective immediately. Flock will remove all equipment at own convenience upon termination. Advance notice will be provided.

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

**6.4 Effect of Termination.** Upon any termination, Flock will collect all Units, delete all Customer Data, terminate Customer's right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Customer shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter Hazardous Conditions in the collection of such units.

**6.5 Survival.** The following sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 6.5, 7.4, and 8-9.

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

**7.1 Remedy.** Upon a malfunction or failure of Hardware or Embedded Software (a "Defect"), Customer must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to, in its sole discretion, repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit; provided that such inspection and test shall occur within 72 hours after Customer notifies the Flock of defect. Flock agrees to replace cameras once at no cost to Customer in the event of theft or damage. Subsequent replacement due to damage or theft will be at Customer's own expense with a replacement cost of \$300 per camera. Customer shall not be required to replace subsequently damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

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

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

## **8. LIMITATION OF LIABILITY**

FLOCK WILL MAINTAIN CURRENT INSURANCE COVERING WORKERS COMPENSATION AND EMPLOYERS' LIABILITY, COMMERCIAL GENERAL LIABILITY, AUTOMOBILE LIABILITY, ERRORS & OMISSIONS AND CYBER, WITH A MINIMUM OF \$1,000,000 OF COVERAGE FOR EACH OCCURRENCE, \$2,000,000 AGGREGATE. CERTIFICATES OF INSURANCE WILL BE PROVIDED UPON REQUEST.

ALL CERTIFICATES OF INSURANCE REQUIRED TO BE OBTAINED BY FLOCK SHALL PROVIDE THAT COVERAGES UNDER THE POLICIES NAMED SHALL NOT BE CANCELED, MODIFIED, REDUCED OR ALLOWED TO EXPIRE WITHOUT AT LEAST THIRTY (30) DAYS PRIOR WRITTEN NOTICE GIVEN TO THE CUSTOMER. ALL CERTIFICATES OF INSURANCE SHALL NAME THE

CUSTOMER AS ADDITIONAL INSURED ON A PRIMARY, NON CONTRIBUTING BASIS INCLUDING A WAIVER OF SUBROGATION IN FAVOR OF THE CUSTOMER.

ALL INSURANCE REQUIRED OF FLOCK SHALL STATE THAT IT IS PRIMARY INSURANCE AS TO ALL ADDITIONAL INSUREDS WITH RESPECT TO ALL CLAIMS ARISING OUT OF OPERATIONS BY OR ON THEIR BEHALF. IF THE CUSTOMER HAS OTHER APPLICABLE INSURANCE COVERAGES, THOSE COVERAGES SHALL BE REGARDED AS EXCESS OR ON A CONTINGENT BASIS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS OFFICERS, REPRESENTATIVES AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S REASONABLE CONTROL, AND SUCH LIMITATION OF LIABILITY SHALL NOT LIMIT THE CUSTOMER'S ABILITY TO RECOVER FOR A CLAIM COVERED BY ANY INSURANCE REQUIRED TO BE OBTAINED BY FLOCK PURSUANT TO THE AGREEMENT FOR SERVICES ENTERED INTO BETWEEN FLOCK AND CUSTOMER. IN THE EVENT OF AN EMERGENCY, CUSTOMER SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES.

## 9. MISCELLANEOUS

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

**9.2 Assignment.** This Agreement is not assignable, transferable or sublicensable by Customer except with Flock's prior written consent. Flock may request to transfer and assign any of its rights and obligations, in whole or in part, under this Agreement with written consent of Customer.

**9.3 Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

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

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

**9.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Illinois.

**9.7 Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services provided hereunder in each case in Supplier business and development and marketing efforts, including without limitation on Flock's website.

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

## **CUSTOMER SERVICE**

Questions concerning these Terms or other requests or questions should be directed to the contact point specified at the end of these Terms.

Flock Safety

[hello@flocksafety.com](mailto:hello@flocksafety.com)