

COMMENTS ON FLOCK "TERMS AND CONDITIONS"

1. The Terms and Conditions ("TAC") provide no meaningful protection of Rollingwood data: The Terms and Conditions state that Flock "does not own and shall not sell "Customer Data", "Customer Generated Data" or "Anonymized Data" (TAC 4.1- 4.3), but this statement is not meaningful, because:

The TAC gives Flock the ability to change the terms of the TAC at will: "These terms and conditions are subject to change." (TAC, last sentence).

The TAC precludes any claims against Flock for breach of contract or warranty and limits liability and indemnity to one year's contract fees - here, \$21,000. Claims are allowed only for gross negligence, willful misconduct, or claims arising under Flock's patents, Flock equipment and its installation. Damages and indemnity are limited to \$21,000. (TAC 9.1, 9.3)

Flock is given express licenses (variously, combinations of "non-exclusive", "irrevocable", "worldwide", "royalty-free", "perpetual") to use "Customer Data", "Customer Generated Data," "Anonymized Data" and "Integration Data" for various purposes and with various limitations (TAC 4.2-4.4) but any limitations on Flock in these terms are not meaningful. Again, as above, these limitations can be unilaterally changed by Flock. The limitation that Flock does not "own" and will not "sell" the data would not preclude Flock from use of the data under a joint venture where Flock contributes the data to the venture and receives a share of profits in return. To the extent a data breach occurs via a website or application provided by Flock's third party providers, there is no recourse as the Flock TAC exempts Flock from any liability for any third party data breach. (TAC 8.6, characterizing any third party technology provider's act or omission an event of "force majeure") The TAC also gives Flock the right to "make any updates to the system or platform that it deems necessary or useful" including such changes as it deems useful to "the competitive strength of, or market for, Flock's products or services" (TAC 2.4).

2. Rollingwood is not given control of access to its customer data.

The TAC contains no statement as to certain assurances given in discussions, such as that Rollingwood will control who can have access to its customer data, that the data will be retained only for 30 days, etc. The TAC also negates any terms not contained in the TAC, the order form or any attached exhibit, and provides that any terms in any such documents conflicting with the TAC are subordinate to the terms of the TAC. (TAC 11.4)

3. Lack of reciprocal obligations:

The TAC makes Rollingwood responsible for "all acts and omissions of Authorized End Users", must make such users aware of the TAC, and "shall cause the Authorized End User to comply with such provisions." (TAC 2.1) However, Flock does not undertake parallel obligations as to its third party contractors (expressly authorized under the TAC to include "web interfaces, cloud storage, wireless and cell services") and, as addressed in Paragraph 1, Flock expressly limits its liability - both as to claims and damages - and its indemnity.

4. Rollingwood is bound by the TAC and any changes to it, but Flock is not.

The TAC states that the City agrees in advance that any changes to the TAC "will not diminish" or "materially change" any terms or conditions of service. (TAC 2.3) The effect of this language is that the City is bound regardless of whatever changes Flock may make to its services and cannot terminate the agreement because of such changes.