

Customer Agreement

This Customer Agreement (“Agreement”) is made on [Insert Date] (the “Effective Date”), between Gatso USA, Inc., a Delaware corporation with a principal business address at 900 Cummings Center, Suite 222-T, Beverly, Massachusetts 01915-6183 (“Gatso” or “Contractor”) and the Village of Orland Park, Illinois, with a principal business address at 14700 S. Ravinia Avenue, Orland Park, IL 60462 (the “Village”).

WHEREAS, the Village wishes to retain the technology and business services of Gatso to provide an automated red light camera enforcement program as further defined in Section 4 of this Agreement (the “Services”), as part of the Village’s automated traffic law enforcement program; and

WHEREAS, Gatso agrees to provide the Services, including the hardware and software to provide and implement an automated speed enforcement system (“System”) at specific intersection approaches, pursuant to the terms of this Agreement;

WHEREAS, it is a mutual objective of both Gatso and the Village to reduce the incidence of vehicle collisions at the traffic intersections that will be monitored pursuant to the terms of this Agreement; and

WHEREAS, on [insert date] the Corporate Authorities of the Village adopted Ordinance No. [insert], which authorized the Village’s entry into this Agreement;

NOW THEREFORE, the parties mutually agree as follows:

1. AGREEMENT DOCUMENTS

This Agreement shall include the following documents (hereinafter referred to as the “Contract Documents”), however this Agreement takes precedence and controls over any contrary provision in any of the Contract Documents. Provisions in the Contract Documents unmodified by this Agreement shall be in full force and effect.

- 1.1 The Request for Proposals issued January 10, 2014;
- 1.2 The Instructions to the Proposers;
- 1.3 This Agreement;
- 1.4 The Proposal submitted on January 22, 2014 including Gatso’s Exceptions to RFP for Red Light Enforcement Program submitted therewith, ~~as it is responsive to the Village’s RFP Requirements;~~
- 1.5 All certifications required by the Village; and
- 1.6 Certificates of Insurance as described in Section 4.20 of this Agreement.

2. AGREEMENT TERM; TERMINATION

- 2.1. Initial Term; Extensions. The Agreement shall commence on the Effective Date and continue for a period of five (5) years (the “Initial Term”). Upon expiration of the Initial Term, the Village will have the right, but not the obligation to extend the term of this Agreement for two (2)

additional 2-year period following the expiration of the Initial Term ~~or any Renewal Term~~ (each a "Renewal Term" and collectively with the Initial Term, the "Term"). The Village may exercise the right to extend the term of the Agreement for a Renewal Term by providing written notice to Gatso not less than thirty (30) days prior to the last day of the Initial Term or the Renewal Term. Gatso may exercise the right not to extend the term of the Agreement for a Renewal Term by providing written notice to the Village not less than one hundred and twenty (120) days prior to the last day of the Initial Term or the Renewal Term.

- 2.2. Termination For Cause. Either party may terminate this Agreement for cause if: (a) the other party has breached its obligations under this Agreement; (b) applicable law is amended, or the Illinois Department of Transportation ("IDOT") adopts a rule or other requirement, to prohibit or substantially restrict the operation of automated traffic law enforcement systems, including the System being provided by Gatso; or (c) any court of competent jurisdiction rules that all or part of the System, or other similar systems, violates applicable law or cannot otherwise be used to enforce notices of violation or citations issued hereunder. The terminating party must provide thirty (30) days advance notice to the other party of its intent to terminate, which notice must include the reasons for the termination. In the case of a breach of this Agreement, the notice must provide the other party with an opportunity to cure the breach within thirty (30) days after receipt of the notice. No termination fee shall be required with respect to termination for cause under this paragraph. Notwithstanding the foregoing, in the event of termination based upon (b), (c) or (d) above, Gatso may suspend the System and all associated Services immediately upon the effective date of such amendment or ruling, as applicable.
- 2.3. Termination By Village For Convenience. The Village may terminate this Agreement at any time at its convenience by giving written notice to Gatso not less than thirty (30) days prior to the termination date. If the Village terminates this Agreement for convenience any time during the first six (6) month period following the date that the installation of the Cameras at the Initial Locations identified in Section 4.4 is complete, then the Village must pay Gatso a fee in the amount of \$30,000. If the Village terminates this Agreement for convenience at any time after this initial six (6) month period, but within the Initial Term, then the Village must pay Gatso a fee in the amount of \$1,000 per Camera Pole, as defined in Section 34.3 for each month that remains in the applicable Initial Term or Renewal Term as of the termination date, not to exceed \$30,000. Any applicable amount (the "Termination Fee") must be paid within thirty (30) days after the Effective Date of Termination as defined in Section 2.4. There is no Termination Fee if the Village provides notice in accordance with this Section 2.3 or terminates at the end of the Initial Term or any Renewal Term.
- 2.4. Cessation of Activities Except Pending Violations. On the termination date (if this Agreement is terminated for convenience pursuant to Section 2.3) or on the first day after any other date of termination or expiration of this Agreement ("Effective Date of Termination"), the image capture activities provided by Gatso under this Agreement shall cease immediately. Nevertheless, unless otherwise prohibited by law, all photo-enforcement violations in process or captured prior to the Effective Date of Termination, will continue until final disposition is reached on the violations and Gatso will continue to provide Services related to the process leading to such judgment, if any.
- 2.5. Removal Of Hardware, Equipment; Restoration. Upon the termination of this Agreement, Gatso will, at its sole expense, promptly remove all cameras provided as part of its Services, and, if Camera Poles were installed by Gatso, restore such locations as set forth in Exhibit A, Section C, which removal will be completed no later than thirty (30) days after the Effective Date of Termination. This section will survive the termination or expiration of this Agreement.

3. COMPENSATION

3.1. Amount. The Village shall pay to Gatso the following fees for the System and related Services:

3.1.1. A “Per Citation Fee” of \$36.00 per paid citation for automated red light enforcement violations detected by a Camera, as described in Section 4.3.

3.2. Fee Payment.

3.2.1. Gatso shall provide an itemized, monthly invoice to the Village within ten (10) days of the first business day of the month. The Village agrees to pay Gatso pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*). Any amounts not paid by Village when due shall bear interest at the rate provided by applicable state law.

3.2.2. Fees are Sole Compensation. The fees required pursuant to this Section 3 shall be Gatso’s sole compensation for the Services described herein. Except as explicitly set forth herein, all costs and expenses associated with the supply, installation, commissioning, operation, maintenance, repair, replacement, and removal of the System and all related hardware and equipment shall remain the responsibility of Gatso.

3.2.3. Price Adjustment. Upon each anniversary of the Effective Date, the pricing set forth in Section 3.1 will increase commensurate with the Consumer Price Index (CPI) per the publication of the U.S. Department of Labor Consumer Price Index for U.S. City average.

4. SCOPE OF WORK

4.1. Gatso Project Manager. Gatso will designate one Gatso employee as the Village’s principal contact at Gatso (“Gatso Project Manager”).

4.2. The System. Gatso shall furnish, operate, and maintain the System in accordance with Gatso’s standard installation practices. In the event Gatso makes upgrades to the software or related performance capabilities of the System generally available to its customers, Gatso will provide such upgrades without charge to the Village.

4.3. Camera Installation. Gatso shall install, operate, and maintain cameras at [insert number (#)] intersections identified by the Village based on community safety and traffic needs. The cameras will be installed by Gatso on Village owned or controlled poles at the selected intersections (each a “Camera”). The Village will provide Gatso with access to such poles and electricity for operation of the cameras on such poles at no charge to Gatso. In the event that there is no feasible pole located at an identified location, Gatso will install a pole at such location subject to the additional terms and conditions set forth in Exhibit A (each a “Camera Pole”). Gatso shall make available, at no charge to the Village, one (1) additional Camera for use by the Village in connection with traffic studies and/or investigative purposes.

4.4. Initial Locations; Relocation; Training. Cameras will initially be installed at the intersection of 151st and LaGrange Road (currently under construction), the intersection of 151st and Harlem

(Northbound approach only), and the intersection of 159th and Harlem (shared with the Village of Tinley Park), or other intersections mutually agreed by the Village and Gatso (“Initial Locations”). Cameras at additional intersections will require Village Board of Trustee approval prior to installation. After an initial three (3) month period in one location, Gatso or the Village may relocate a Camera three times per calendar year at no cost to the Village, provided that there is existing infrastructure for such camera at the new location. The Village may elect to have Gatso train one (1) or more technical staff members in how to move an installed Camera to a new location with existing infrastructure, including how to attach and align the Camera, as well as how to coordinate with Gatso personnel for necessary technical adjustments for a new Camera location. Once Village designees have completed such training, upon seven (7) days prior written notice from the Village, such designees may relocate a Camera on a mutually agreed date and time in accordance with such training to a location with a viable Camera pole. The Village shall be responsible for any damage to a Camera incurred during any relocation by the Village. In the event that there is no feasible pole located at an identified location, Gatso will install a Camera Pole at such location subject to the additional terms and conditions set forth in Exhibit A.

- 4.5. 24-Hour Operation; Amber/Silver Alerts. Gatso shall operate the server components of the System on a continuous, 24-hour basis, seven (7) days per week, except for reasonable scheduled and unscheduled downtime, including System maintenance and repairs as set forth in Section 4.6, and Force Majeure as set forth in Section 6.4. In addition, Gatso shall make the Amber/Silver alert and license plate recognition functionality of the Cameras installed pursuant to Section 4.4 available to the Village at no cost to the Village.
- 4.6. System Maintenance; Repairs; Logs. Gatso shall maintain the System and shall promptly repair or replace any damaged or defective equipment at its own expense except if the damage was caused by the negligent operation of a Village owned or controlled vehicle. Gatso shall perform preventative maintenance and cleaning of System components on a regularly scheduled basis, including review, cleaning and testing of Camera settings and operation, communications, and other System components. Gatso will use commercially reasonable efforts to notify the Village and initiate repairs to the System within forty-eight (48) hours after identification by Gatso of any damage or defect.
- 4.6.1. Emergency Response. Gatso will provide emergency response services in the event of a non-operational Camera within four (4) hours of receipt of notice from the Village.
- 4.6.2. Downtime Compensation. Gatso will use commercially reasonable efforts to complete repairs of any non-operational Camera within seventy-two (72) hours after identification of any damage or a defect by the Village. If Gatso fails to render any such Camera functioning during this 72 hour period, Gatso will be assessed a penalty equal to 1/30th of the average monthly per camera revenue for such camera during the prior ninety (90) day period for each day beyond the 72 hour limit that any Camera remains inoperable.
- 4.7. Signage. At the Village’s request, Gatso will provide and install standard Gatso signage for each approach road to an enforced municipality at no cost to the Village. Gatso shall also provide non-standard signage specified by the Village (such as signs that include welcome messages, logos, or other features), but the Village shall bear all extra costs attributable to any such non-standard features. Those extra costs shall be included in the first invoice issued by Gatso to the Village under this Agreement. All signage must be approved by the Village prior to installation by Gatso.

- 4.8. Village Personnel Training. Gatso will provide System training, including training documentation, to Village personnel designated by the Village.
- 4.9. Images and Data; Violation Package. Gatso will upload encrypted violation images and embedded violation data to a Gatso server in a timely manner. Gatso shall correlate images and data with DMV records, and shall assemble the images and data into an electronic violation package (a "Violation Package") in such a manner so as to allow the Village to carry out those responsibilities set forth in Section 5.3 of this Agreement.
- 4.10. Processing Of Violation Package. Gatso shall process Violation Packages through a system that shall be accessible by the Village Police Department through the internet to review, and approve or reject, each violation before a notice of violation is issued related to that violation. Gatso shall notify the Village of the list of supported web browsers for accessing this system. Gatso will use commercially reasonable efforts to process violation images and send a Violation Package to the Village Traffic Compliance Administrator for review within four (4) business days after the violation has occurred. Gatso shall provide reasonable aid and assistance in the prosecution of citations issued hereunder, including the provision of witnesses, as may be required in a court or quasi-judicial panel of competent jurisdiction, at no charge to the Village.
- 4.11. Notices of Violation. After the Village's review and approval of a violation as set forth in Section 5.3, Gatso shall issue a notice of violation with images and data related to the notice of violation by mail within ten (10) days. The System shall allow the registered owner or owners of a cited vehicle to review the images and data related to the notice of violation, through the web-portal by using a unique identifier code issued as part of the notice of violation. Additionally, Gatso will maintain a toll-free telephone number for registered owners to discuss notices of violation and make payments, with hours of 8:00 a.m. to 5:00 p.m. (Eastern) Monday through Friday, not including state and federal holidays.
- 4.12. Warning Notices. Gatso has the ability to issue an unlimited number of warning tickets at no additional charge to the Village. The issuance of warning notices will be reasonably limited so as not to impede public safety goals or Gatso's ability to collection infraction fees when violations have been identified by Gatso and approved by the Village.
- 4.13. Payment Methods; Collection of Infraction Fees. Gatso shall provide the registered owner or owners of a cited vehicle the following payment methods: "pay by web," "pay by telephone," "pay by Kiosk" and "pay by mail" for the payment of notices of violation issued through the System. Gatso will install two (2) touch-screen based violation review and payment systems (each a "Kiosk") at no cost to the Village. Kiosks will be located at the Village Hall (14700 S. Ravinia Ave.) and the Police Station (15100 S. Ravinia Ave.) Gatso may pass through to violators a credit card convenience fees not to exceed \$3.50 per transaction for violations paid by credit card ("Credit Card Convenience Fee"). Any registered owner that does not wish to pay the Credit Card Convenience Fee may remit payment to Gatso by mail in the form of a money order or check drawn upon a U.S. bank. They Village shall have no obligation for the payment of any Credit Card Convenience Fees.
- 4.14. Collection of Infraction Fees. Gatso will collect infraction fees from those who voluntarily pay in response to notices issued by Gatso, and shall place such fees in a separate account with a banking institution approved by the Village ("Master Account"). The account shall be established in a manner which permits: (a) funds to be swept to a Village-designated bank account by Gatso; and (b) and for the Village to have viewing rights to the account.

4.15. Further Action by Village. If a registered owner disputes responsibility for a violation and a different violator is identified by the recipient of the notice of violation, then Gatso will reissue the citation to that different violator within ten (10) days after such identification.

4.16. Storage Of Violation Packages. Gatso will store all captured violation data and images pursuant to the policy established by the Village and communicated to Gatso prior to the Effective Date. The Village shall have reasonable access to the Violation Packages during the storage period.

4.17. NLETS Requirements. All authorized Gatso or subcontractor personnel reviewing the vehicle registration information obtained via the National Law Enforcement Telecommunications System (“NLETS”) on behalf of the Village shall comply with all applicable State of Illinois and NLETS requirements.

4.18. Reports. Gatso shall provide monthly reports to the Village comprised of statistics relating to the functioning of the System, including but not limited to the number of captured violations, the number of violations sent for Police Department approval, the number of notices of violation issued, the number of notices of violation paid, the number of contested notices of violation, the amount of scheduled and unscheduled downtime of the System, and such other data as may be reasonably requested by the Village.

4.19. Public Awareness. Gatso shall assist and support the Village’s efforts in public education and awareness programs, by providing information including, but not limited to, violation statistics and violation statistic improvements. Gatso shall provide the Village with a pamphlet that the Village may reproduce and distribute to Village residents; such pamphlet shall include a description of the operation of the System in non-technical terms.

4.20. Insurance. Gatso shall, during the Term of this Agreement, maintain insurance coverage in at least the minimum amounts set forth in this Section 4.20. In the event the IDOT or the Intergovernmental Risk Management Agency require additional coverages or coverage amounts, the Village shall notify Gatso of such requirements and Gatso shall update the insurance coverages maintained pursuant to this Section 4.20 within thirty (30) days of such notice.

4.20.1. Workers’ Compensation and Employer’s Liability with limits not less than:

Workers’ Compensation:	statutory
Employer’s Liability:	\$500,000 ea. accident-injury
	\$500,000 ea. employee-disease
	\$500,000 disease-policy

4.20.2. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned, or rented of not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

4.20.3. Comprehensive General Liability with limits not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

4.20.4. Umbrella Liability with limits not less than \$2,000,000 Bodily Injury and Property Damage Combined Single Limit. This policy shall apply in excess of the limits stated in 4.20.1 through 4.20.3 above.

4.20.5. Gatso shall list the Village as an additional insured under all of the policies described in this Section 4.20 and shall file with the Village certificates of insurance reflecting the minimum insurance coverage and limits provided in this Section 4.20 prior to commencing work on the System.

5. VILLAGE RESPONSIBILITIES

- 5.1. Village Project Manager. The Village will designate one Village employee as Gatso's principal contact at the Village ("Village Project Manager").
- 5.2. Cooperation. The Village will cooperate with Gatso during all aspects of the planning, installation, implementation, and operation of the System and perform any other Village obligations set forth in this Agreement. For each installation performed by Gatso pursuant to Section 4.3 and 4.4, the Village will provide to Gatso or its subcontractors the use of a bucket truck and the assistance of those Village personnel reasonably requested by Gatso. The Village will not access, move or otherwise tamper with an installed Camera except as specifically set forth in Section 4.4. The Village will provide suitable space, power, internet connectivity and insurance coverage for the Kiosks described in Section 4.13.
- 5.3. Review Of Violations. The Village will provide sworn Village law enforcement officers, community service officers or any other Village employee designated by the Village to carefully review each Violation Package to determine whether: (a) the violation is approved and notices of violation can be mailed; or (b) the violation is rejected. If the violation is rejected, the Village Project Manager will report to Gatso the basis for the rejection. The Village is solely responsible for determining which violations identified by Gatso are issued as citations.
- 5.4. Access to Information Services. To the extent required by NLETS, the Village will provide written authorization (in a form reasonably acceptable to the Village) for Gatso and its subcontractors to perform Motor Vehicle Division inquiries on behalf of the Village.
- 5.5. Collection of Unpaid Fines. In the event a violator fails to pay or contest a notice of violation within sixty (60) days of receipt, the Village shall refer such matters to a third party collections agency to recover all costs of the fines, including collections costs and expenses for failure to pay in a timely manner. Any amounts collected in this manner will be deemed paid citations for the purposes of Section 3.1.1. In the event that the Village fails to timely engage a collections agency, Gatso may, at its option and expense, retain such an agency to recover such fines and costs.

6. GENERAL PROVISIONS

6.1 Indemnification Obligations.

6.1.1 To the extent allowed under the constitution and laws of the State of Illinois, the Village shall indemnify, defend, and hold harmless Gatso and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them (including but not limited to equipment suppliers and installers) (the "Gatso Indemnitees") from and against any and all third party claims arising out of or related to:

- a. any material breach of the representations and warranties of the Village set forth in Section 6.3.2; and

- b. negligence or misconduct of the Village or its employees, contractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused, in whole or in part, by the negligence or misconduct of any Gatso Indemnitee.

6.1.2. Gatso shall indemnify, defend, and hold harmless the Village and its elected officials, officers, employees, agents, attorneys, representatives, and permitted assignees and all persons acting by, through, under or in concert with them (the "Village Indemnitees") from and against any and all third party claims arising out of or related to:

- a. any material breach of the representations and warranties of the Gatso set forth in Section 6.3.1;
- b. negligence or misconduct of Gatso or its employees, contractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused in whole or in part, by the negligence or misconduct of any Village Indemnitee; or
- c. a claim that the System infringes the copyright or U.S. patent of a third party. In the event such a claim is made or appears likely to be made, Gatso will in addition to its indemnification obligations hereunder, if any, either: (a) enable the Village to continue to use the System, (b) modify the System to render it non-infringing; or (c) replace the System with a replacement System at least functionally equivalent. If Gatso determines that none of these alternatives is reasonably available, Gatso shall have the right to terminate this Agreement effective immediately.

6.1.3. In the event any third party claim, action, or demand for which a party seeks indemnification from the other pursuant to this Section 6.1 (each a "Claim"), the Indemnified Party must give the Indemnifying Party written notice of such Claim promptly after the Indemnified Party first becomes aware of it. The Indemnifying Party will have the right to choose counsel to defend against the Claim (subject to approval of such counsel by the Indemnified Party, which approval may not be unreasonably withheld, conditioned, or delayed) and to control and settle the Claim. The Indemnified Party will have the right to participate in the defense of the Claim at its sole expense.

6.2. LIMITATION OF LIABILITY. EXCEPT FOR AMOUNTS PAYABLE WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6.1: (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, THE SERVICES, OR THE SYSTEMS, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY; AND (B) THE AGGREGATE LIABILITY OF EITHER PARTY FOR DIRECT DAMAGES ARISING OUT OF THE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE LIMITED TO THE FEES PAID OR PAYABLE BY THE VILLAGE TO GATSO PURSUANT TO SECTION 3.1 DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM.

6.2.6.3. Representations and Warranties.

6.3.1. Gatso represents and warrants that at all times during the Term:

- a. it has the legal power to enter into the Agreement;
- b. the Systems are provided and will continue to perform in accordance with this Agreement;
- c. the Services described herein will be performed in a workmanlike and professional manner with due care and skill;
- d. it will perform the Services described herein in compliance with all applicable federal, State of Illinois, and local laws including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq*;
- e. it is not barred by law from contracting with Village or with any other unit of state or local government as a result of (a) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Gatso is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax;
- f. the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Agreement and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Gatso, in procuring this Agreement, has colluded with any other person, firm, or corporation, then Gatso will be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement will be null and void, at the Village's option; and
- g. neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specifically Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specifically Designated National and Blocked Person. Gatso further represents and warrants to the Village that Gatso and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specifically Designated National and Blocked Person.

6.3.2. The Village represents and warrants that at all times during the Term:

- a. it has the legal power to enter into the Agreement and that it has complied with any and all applicable federal, State of Illinois, and local procurement requirements, in connection therewith; and

- b. it will utilize the System in compliance with all applicable federal, State of Illinois and local laws.

6.3.3. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 6.3:

- a. THE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
- b. GATSO MAKES NO WARRANTY THAT THE SERVICES AND/OR SYSTEM WILL MEET THE VILLAGE'S REQUIREMENTS, OR THAT THE SERVICES AND/OR SYSTEMS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES GATSO MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES AND/OR SYSTEM.

- 6.4. Force Majeure. Neither party shall be liable for delays in the performance of its obligations hereunder due to a Force Majeure Event. "Force Majeure Event" means conditions or other circumstances, such as acts of God, that: (i) were not foreseen, and could not have been reasonably foreseen, by the party obligated to perform, (ii) are beyond the control of the party obligated to perform, and (iii) materially hinder or interfere with the ability of the party obligated to perform to complete performance; provided, however, that no such condition or circumstance will be a Force Majeure Event if it is the result of the fault, negligence, or material breach of this Agreement by the party obligated to perform. Examples of Force Majeure events include wars, floods, strikes and labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, severe adverse weather conditions not reasonably anticipated, and delays in permitting.
- 6.5. Relationship between Gatso and Village. Gatso is an independent contractor. This Agreement does not create, and nothing in this Agreement may be deemed, construed, or applied to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. Further, this Agreement does not permit either party to incur any debts or liabilities or obligations on behalf of the other party, except only as specifically provided herein.
- 6.6. Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Gatso may assign the Agreement to an affiliate or in connection with a merger or sale of substantially all of the assets related to the Agreement. The Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 6.7. Escalation Procedure. The following procedure will be followed if resolution is required to a conflict arising during the performance of this Agreement.
- 6.7.1. When a conflict arises between the Village and Gatso, the project team members will first strive to work out the problem internally.

- 6.7.2. If the project team cannot resolve the conflict within five (5) business days, the Village Project Manager identified pursuant to Section 5.1 and the Gatso Project Manager identified pursuant to Section 4.1 will meet to resolve the issue.
- 6.7.3. If the conflict is not resolved within five (5) business days after being escalated to the Project Managers, a senior executive of Gatso will meet with the Village Chief of Police and/or the Village Manager within five (5) days to resolve the issue.
- 6.7.4. If the conflict remains unresolved as described in Section 6.7.3, the parties may mutually agree to terminate the Agreement.
- 6.7.5. During any conflict resolution, Gatso agrees to provide those Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. The Village agrees to pay invoices per the Agreement.
- 6.8. Applicable Law; Jurisdiction and Venue. This Agreement is governed by and construed in all respects in accordance with the laws of the State of Illinois, without regard to any conflicts of laws rules. Any lawsuit arising out of or in connection with this Agreement must be filed in a state or federal court of competent jurisdiction in Illinois, and both parties specifically agree to be bound by the jurisdiction and venue of such courts.
- 6.9. Entire Agreement; Amendment. This Agreement and its exhibits constitute the entire agreement between the parties about the Services and supersede all prior and contemporaneous agreements or communications. This Agreement and its Exhibits may only be amended by a writing specifically referencing this Agreement which has been signed by authorized representatives of the parties.
- 6.10. Counterparts. This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same Agreement. Any copy of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.
- 6.11. Enforceability. If any term in this Agreement is found by competent judicial authority to be unenforceable in any respect, the validity of the remainder of this Agreement will be unaffected, provided that such unenforceability does not materially affect the parties' rights under this Agreement.
- 6.12. Waiver. An effective waiver under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent instances.
- 6.13. Notices. Any notices provided pursuant to this Agreement shall be effective three days after deposit in the U.S. Mail if sent by Certified Mail Return Receipt Requested, or immediately if by confirmed facsimile to the parties as follows:

Village: Paul G. Grimes
Village Manager
14700 S. Ravinia Avenue
Orland Park, IL 60462

Gatso: Andrew Noble, President
Gatso USA, Inc.
900 Cummings Center, Suite 222-T
Beverly, Massachusetts 01915-6183

IN WITNESS WHEREOF, Gatso and the Village of Orland Park, IL have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Agreed to:
Gatso USA, Inc.

Agreed to:
Village of Orland Park, Illinois

By _____
Authorized signature

By _____
Authorized signature

Name (type or print): Andrew Noble
Title: President
Date:

Name (type or print): Paul G. Grimes
Title: Village Manager
Date:

Attested to:

Attested to:

By _____

By _____

Name (type or print):
Title:
Date:

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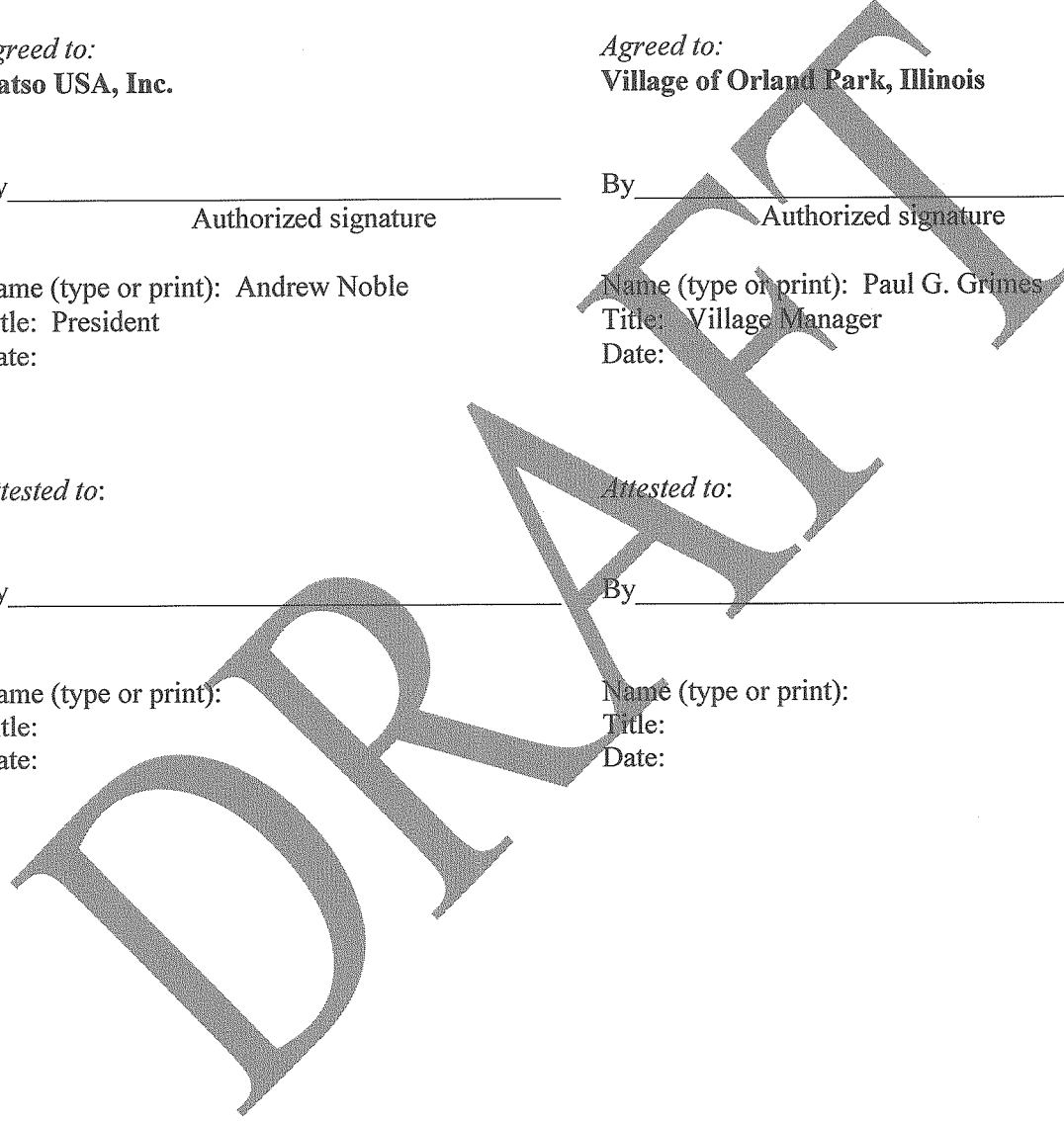


EXHIBIT A

Additional Terms and Conditions for Installation of Camera Poles

In the event that Gatso is required to install one (1) or more Camera Poles pursuant to Section 4.3 or 4.4 of the Agreement, the following additional terms and conditions shall apply:

- A. Obtaining Permits. Gatso shall prepare all permit applications, design drawings or other related documents as may be reasonably required by the Village or any other governmental entities for the installation and operation of the poles. The Village will provide to Gatso, at no cost, all Village permits necessary for the operation of the System and provision of the Services provided Gatso meets the minimum requirements for such permits. Gatso will use commercially reasonable efforts to obtain any other necessary permits for the poles from applicable agencies and shall pay all permit or other fees charged by such governmental entities in connection with the installation and operation of the System. The Village will reasonably assist Gatso in securing necessary permits from other governmental agencies, as required.
- B. Installation. Gatso will commence installation of the poles within ten (10) business days after any and all necessary State of Illinois, Cook and Will County, and Village permit applications have been approved and such permits have been received. Gatso shall not be responsible for any delays associated with the failure of any state or local government to promptly provide applicable permits. In the event any permitting agency requires one (1) or more upgrades to any Village owned or controlled equipment at any location where the System will be installed, such upgrades shall be the sole responsibility of the Village. Gatso may elect to add a separate circuit breaker to the traffic control system power source, if applicable, to obtain electric power for the System. Gatso will use commercially reasonable efforts to complete installation of the System in a timely manner.
- C. Removal Of Hardware, Equipment; Restoration. Upon the termination of this Agreement, Gatso shall restore the surface of the Village's property to substantially the same condition as such property was in immediately prior to this Agreement. Notwithstanding the foregoing, Gatso will not remove any camera pole foundation, which shall be left approximately flush with grade with no exposed bolts or other hazards. Installed underground conduit and other equipment shall not be required to be removed. Gatso shall use commercially reasonable efforts such that removal and restoration activities occur within forty-five (45) days after the Effective Date of Termination and do not unreasonably interfere with or adversely affect traffic flow.