



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement (the **Agreement**) by and between Axon Enterprise, Inc., (**Axon or Party**) a Delaware corporation having its principal place of business at 17800 N 85th Street, Scottsdale, Arizona, 85255, and City of Clearwater, FL (**Agency, Party** or collectively **Parties**), is entered into the later of (a) the last signature date on this Agreement, or (b) the signature date on the quote (**the Effective Date**).

This Agreement sets forth the terms and conditions for the purchase, delivery, use, and support of Axon Products and Services as detailed in the Quote Appendix (the **Quote**), which is hereby incorporated by reference. In consideration of this Agreement, the Parties agree as follows:

- 1 **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect in accordance with the term of the Quote, or until terminated by either Party. The Agency may renew the terms and conditions of this Agreement for an additional 5 years upon the execution of a new pricing Quote. New products and services may require additional terms and conditions. Axon services will not be authorized until a signed Quote or Purchase Order is accepted by Axon, whichever is first.

- 2 **Definitions.**

"Confidential Information" means any materials disclosed by either Party defined as "confidential" or "trade secrets" by applicable Florida Law, including but not limited to Chapter 119, Florida Statutes.

"Evidence.com Service" means Axon web services for Evidence.com, the Evidence.com site, Evidence Sync software, Axon Capture App, Axon View App, other software, maintenance, storage, and any product or service provided by Axon under this Agreement for use with Evidence.com. This does not include any third-party applications, hardware warranties, or my.evidence.com services.

"Products" means all hardware, software, cloud based services, and software maintenance releases and updates provided by Axon under this Agreement.

"Quote" is an offer to sell, and is valid only for products and services listed on the quote at prices on the quote. Any terms and conditions contained within the Agency's purchase order in response to the Quote will be null and void and shall have no force or effect. Axon is not responsible for pricing, typographical, or other errors in any offer by Axon and Axon reserves the right to cancel any orders resulting from such errors.

"Services" means all services provided by Axon pursuant to this Agreement.

- 3 **Payment Terms.** Axon invoices upon shipment, unless otherwise specified in the Quote. Invoices are due to be paid within 30 days of the date of invoice, unless otherwise specified by Axon. All orders are subject to prior credit approval. Payment obligations are non-cancelable, fees paid are non-refundable, and all amounts payable will be made without setoff, deduction, or withholding. If a delinquent account is sent to collections, the Agency is responsible for all collection and attorneys' fees. In the event the Agency chooses a phased deployment for the Products in the Quote, the Quote pricing is subject to change if the phased deployment changes.



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- 4 **Taxes.** Unless Axon is provided with a valid and correct tax exemption certificate applicable to the purchase and ship-to location, the Agency is responsible for sales and other taxes associated with the order.
- 5 **Shipping: Title: Risk of Loss: Rejection.** Axon reserves the right to make partial shipments and Products may ship from multiple locations. All shipments are FOB Shipping Point via common carrier and title and risk of loss pass to the Agency upon delivery to the common carrier by Axon. The Agency is responsible for any shipping charges on the Quote unless agreed upon by the Parties. Shipping dates are estimates only. The Agency may reject Products that do not match the Products listed in the Quote, are damaged, or non-functional upon receipt (**Nonconforming Product**) by providing Axon written notice of rejection within 30 days of shipment. In the event the Agency receives a Nonconforming Product, the Agency's sole remedy is to return the Product to Axon for repair or replacement as further described in the Warranties Section. Failure to notify Axon within the 30-day rejection period will be deemed as acceptance of Product.
- 6 **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.
- 7 **Warranties.**
- 7.1 **Hardware Limited Warranty.** Axon warrants that its law enforcement hardware Products are free from defects in workmanship and materials for a period of ONE (1) YEAR from the date of receipt by Agency. Extended warranties run from the date of purchase of the extended warranty through the balance of the 1-year limited warranty term plus the term of the extended warranty measured from the date of expiration of the 1-year limited warranty. CEW cartridges and Smart cartridges that are expended are deemed to have operated properly. Axon-manufactured accessories are covered under a limited 90-DAY warranty from the date of receipt by Agency. Non-Axon manufactured accessories, including all Apple and Android devices, are covered under the manufacturer's warranty. In the event of a warranty claim for an Apple or Android device, the Agency should contact the manufacturer. If Axon determines that a valid warranty claim is received within the warranty period, as further described in the Warranty Limitations section, Axon agrees to repair or replace the Product. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.
- 7.2 **Warranty Limitations.**
- 7.2.1 The warranties do not apply to and Axon will not be responsible for any loss, data loss, damage, or other liabilities arising from damage: (a) from failure to follow instructions relating to the Product's use; (b) caused by use with non-Axon products or from the use of cartridges, batteries or other components that are not manufactured or recommended by Axon; (c) caused by abuse, misuse, intentional or deliberate damage to the Product, or force majeure; (d) to a Product or part that has been repaired or modified by persons other than Axon authorized personnel or without the written permission of Axon; or (e) to any Axon Product whose serial number has been removed or defaced.
- 7.2.2 **To the extent permitted by law, the warranties and the remedies set forth above are exclusive and Axon disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If**



statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement.

7.2.3 Axon's cumulative liability to any Party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any Axon Product will not exceed the purchase price paid to Axon for the Product or if for Services, the amount paid for such Services over the prior 12 months preceding the claim. In no event will either Party be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory.

7.3 **Warranty Returns.** If a valid warranty claim is received by Axon within the warranty period, Axon agrees to repair or replace the Product that Axon determines in its sole discretion to be defective under normal use, as defined in the Product instructions. Axon's sole responsibility under this warranty is to either repair or replace with the same or like Product, at Axon's option.

7.3.1 For warranty return and repair procedures, including troubleshooting guides, please go to Axon's websites www.axon.com/support or www.evidence.com, as indicated in the appropriate Product user manual or quick start guide.

7.3.2 Before delivering Product for warranty service, it is the Agency's responsibility to upload the data contained in the Product to the Evidence.com Service or download the Product data and keep a separate backup copy of the contents. Axon is not responsible for any loss of software programs, data, or other information contained on the storage media or any other part of the Product.

7.3.3 A replacement Product will be new or like new and have the remaining warranty period of the original Product or 90 days from the date of replacement or repair, whichever period is longer. When a Product or part is exchanged, any replacement item becomes Agency's property and the replaced item becomes Axon's property.

8 **Product Warnings.** See Axon's website at www.axon.com/legal for the most current Axon product warnings.

9 **Design Changes.** Axon reserves the right to make changes in the design of any of Axon's products and services without incurring any obligation to notify the Agency or to make the same change to products and services previously purchased.

10 **Insurance.** Axon will maintain, at Axon's own expense and in effect during the Term, Commercial General Liability Insurance, and Workers' Compensation Insurance and Commercial Automobile Insurance, and will furnish certificates of insurance or self-insurance upon request.

11 **Indemnification.** Axon will indemnify and defend the Agency's officers, directors, and employees (**Agency Indemnitees**) from and against all claims, demands, losses, liabilities, reasonable costs and expenses arising out of a claim by a third party against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct of Axon under or related to this Agreement, except in the case of negligent acts, omissions or willful misconduct of the Agency. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a



waiver of any immunity to which Agency is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense Agency may have under § 768.28, Florida Statutes or as consent to be sued by third parties.

- 12 **IP Rights.** Axon owns and reserves all right, title, and interest in the Axon Products and Services, and related software, as well as any suggestions made to Axon.
- 13 **IP Indemnification.** Axon will defend, indemnify, and hold the Agency Indemnitees harmless from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim alleging that use of Axon Products or Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. The Agency must provide Axon with prompt written notice of such a claim, tender to Axon the defense or settlement of such a claim at Axon's expense, and cooperate fully with Axon in the defense or settlement of such a claim.

Axon has no liability to the Agency or any third party if any alleged infringement or claim of infringement is to any extent based upon: (a) any modification of the Evidence.com Service by the Agency or any third party not approved by Axon; (b) use of the Evidence.com Service in connection or in combination with equipment, devices, or services not approved or recommended by Axon; (c) the use of Evidence.com Service other than as permitted under this Agreement or in a manner for which it was not intended; or (d) the use of other than the most current release or version of any software provided by Axon as part of or in connection with the Evidence.com Service. Nothing in this Section will affect any warranties in favor of the Agency that are otherwise provided in or arise out of this Agreement.

Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity to which Agency is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense Agency may have under § 768.28, Florida Statutes or as consent to be sued by third parties.

- 14 **Agency Responsibilities.** The Agency is responsible for (i) use of Axon Products (including any activities under the Agency Evidence.com account and use by Agency employees and agents), (ii) breach of this Agreement or violation of applicable law by the Agency or any of the Agency's end users, (iii) Agency Content or the combination of Agency Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights by Agency Content or by the use of Agency Content, (iv) a dispute between the Agency and any third party over Agency use of Axon Products or the collection or use of Agency Content, (v) any hardware or networks that the Agency connects to the Evidence.com Service, and (vi) any security settings the Agency establishes to interact with or on the Evidence.com Service.

15 **Termination.**

- 15.1 **By Either Party.** Either Party may terminate for cause upon 30 days advance notice to the other Party if there is any material default or breach of this Agreement by the other Party, unless the defaulting Party has cured the material default or breach within the 30-day notice period. In the event that the Agency terminates this Agreement due to Axon's failure to cure



the material breach or default, Axon will issue a refund of any prepaid amounts on a prorated basis from the date of notice of termination.

- 15.2 By Agency.** The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Agency's then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the Agency's then current fiscal year, or as soon as reasonably practicable under the circumstances.

Agency may terminate this agreement without cause with 60 days written notice to Axon. In such instance, subject to Section 15.3 herein, Agency is liable for any fees obligated during the remainder of the Agency's current fiscal year in which the agreement is terminated, but Agency shall not be liable for fees during any remaining years within the Term of this agreement, if applicable.

- 15.3 Effect of Termination.** Upon any termination of this Agreement: (a) all Agency rights under this Agreement immediately terminate, subject to the terms of this Agreement; (b) the Agency remains responsible for all fees and charges incurred through the date of termination; and (c) Payment Terms, Warranty, Product Warnings, Indemnification, and Agency Responsibilities Sections, as well as the Evidence.com Terms of Use Appendix Sections on Agency Owns Agency Content, Data Storage, Fees and Payment, Software Services Warranty, IP Rights and License Restrictions will continue to apply in accordance with their terms. If the Agency purchases Products for a value less than the Manufacturer's Suggested Retail Price (**MSRP**) and this Agreement is terminated before the end of the term then (a) the Agency will be invoiced for the remainder of the MSRP for the Products received and not already paid for; or (b) only in the case of termination for non-appropriations, return the Products to Axon within 30 days of the date of termination. For bundled Products, the MSRP is the value of all standalone components of the bundle.

16 General.

- 16.1 Confidentiality.** Both Parties will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of either Party's Confidential Information. Except as required by applicable law, neither Party will disclose either Party's Confidential Information during the Term or at any time during the 5-year period following the end of the Term. Unless the Agency is legally required to disclose Axon's pricing, all Axon pricing is considered confidential and competition sensitive. To the extent allowable by law, Agency will provide notice to Axon prior to any such disclosure. Notwithstanding the above, Axon retains the right to publicly announce information pertaining to this Agreement. As a publicly traded company, Axon has a duty to provide shareholders with information on material agreements.

- 16.2 Excusable delays.** Axon will use commercially reasonable efforts to deliver all Products and Services ordered as soon as reasonably practicable. In the event of interruption of any delivery



due to causes beyond Axon's reasonable control, Axon has the right to delay or terminate the delivery with reasonable notice.

- 16.3 Force Majeure.** Neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the Parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- 16.4 Proprietary Information.** The Agency agrees that Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services, and that the Agency will not directly or indirectly cause any proprietary rights to be violated, except as required by law.
- 16.5 Independent Contractors.** The Parties are independent contractors. Neither Party, nor any of their respective affiliates, has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 16.6 No Third-Party Beneficiaries.** This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.
- 16.7 Non-discrimination and Equal Opportunity.** During the performance of this Agreement, neither the Parties nor the Party's employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall receive consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.
- 16.8 U.S. Government Rights.** Any Evidence.com Service provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" will have the same rights and restrictions generally applicable to the Evidence.com Service. If the Agency is using the Evidence.com Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, the Agency will immediately discontinue use of the Evidence.com Service. The terms "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 16.9 Import and Export Compliance.** In connection with this Agreement, each Party will comply with all applicable import, re- import, export, and re-export control laws and regulations.
- 16.10 Assignment.** Neither Party may assign or otherwise transfer this Agreement without the prior



written approval of the other Party. Axon may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to an affiliate or subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns.

- 16.11 No Waivers.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of the provision nor limit the Party's right to enforce the provision at a later time.
- 16.12 Severability.** This Agreement is contractual and not a mere recital. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 16.13 Governing Law; Venue.** The laws of the state where the Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the Parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 16.14 Public Records.** In addition to all other contract requirements, Axon agrees to comply with public records law.

IF AXON HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AXON'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 112 S. Osceola Ave., Clearwater, FL 33756.

Axon's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by Agency (hereinafter "public agency") to perform the service being provided by Axon hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Axon does not



transfer the records to the public agency.

d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of Axon or keep and maintain public records required by the public agency to perform the service. If Axon transfers all public records to the public agency upon completion of the contract, Axon shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Axon keeps and maintains public records upon completion of the contract, Axon shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency. Notwithstanding the foregoing, data that was captured on an Axon device will be exported in MP4 format. With regard to data captured from third party sources and imported into Evidence.com, the file will be exported in the same format in which it was uploaded.

16.15 Notices. All communications and notices to be made or given pursuant to this Agreement must be in the English language. Notices provided by posting on the Agency's Evidence.com site will be effective upon posting and notices provided by email will be effective when the email was sent. Notices provided by personal delivery will be effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Contracts
Division
17800 N. 85th Street
Scottsdale, Arizona 85255
contracts@axon.com

Agency: Clearwater Police Department
Attn: Major Dalton, Support Services
645 Pierce Street
Clearwater, Florida 33756
David.Dalton@myclearwater.com

16.16 Entire Agreement. This Agreement, including the Appendices attached hereto, and the Quote provided by Axon, represents the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between the Parties, whether written or verbal, regarding the subject matter of this Agreement. No modification or amendment of any portion of this Agreement will be effective unless in writing and signed by the Parties to this Agreement. If Axon provides a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

16.17 Counterparts. If this Agreement form requires the signatures of the Parties, then this Agreement may be executed by electronic signature in multiple counterparts; each of which is considered an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories, whose signatures appear below, have been and are, on the date of signature, duly authorized to execute this Agreement.

Axon Enterprise, Inc.

Signature: _____

Name: Josh Isner

Title: Chief Revenue Officer

Date: 1/16/2019

Countersigned:

George N. Cretekos
Mayor

Approved as to form:

Matt Smith
Assistant City Attorney

CITY OF CLEARWATER, FLORIDA

By: _____

William B. Horne II
City Manager

Attest:

Rosemarie Call
City Clerk

Evidence.com Terms of Use

Appendix

- 1 **Evidence.com Subscription Term.** The Evidence.com Subscription Term will begin after shipment of the Axon body worn cameras. If shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. For phased deployments, the Evidence.com Subscription begins upon the shipment of the first phase. For purchases that consist solely of Evidence.com licenses, the Subscription will begin upon the Effective Date.

- 2 **Access Rights. "Agency Content"** means software, data, text, audio, video, images or other Agency content or any of the Agency's end users (a) run on the Evidence.com Service, (b) cause to interface with the Evidence.com Service, or (c) upload to the Evidence.com Service under the Agency account or otherwise transfer, process, use or store in connection with the Agency account. Upon the purchase or granting of a subscription from Axon and the opening of an Evidence.com account, the Agency will have access and use of the Evidence.com Service for the storage and management of Agency Content during the Evidence.com Subscription Term.

The Evidence.com Service and data storage are subject to usage limits. The Evidence.com Service may not be accessed by more than the number of end users specified in the Quote. If Agency becomes aware of any violation of this Agreement by an end user, the Agency will immediately terminate that end user's access to Agency Content and the Evidence.com Services. For Evidence.com Lite licenses, the Agency will have access and use of Evidence.com Lite for only the storage and management of data from TASER CEWs and the TASER CAM during the subscription Term. The Evidence.com Lite Service may not be accessed to upload any non-TASER CAM video or any other files.

- 3 **Agency Owns Agency Content.** The Agency controls and owns all right, title, and interest in and to Agency Content and except as otherwise outlined herein, Axon obtains no interest in the Agency Content, and the Agency Content are not business records of Axon. The Agency is solely responsible for the uploading, sharing, withdrawal, management and deletion of Agency Content. Axon will have limited access to Agency Content solely for providing and supporting the Evidence.com Service to the Agency and Agency end users. The Agency represents that the Agency owns Agency Content; and that none of Agency Content or Agency end users' use of Agency Content or the Evidence.com Service will violate this Agreement or applicable laws.

- 4 **Evidence.com Data Security.**

4.1. **Generally.** Axon will implement commercially reasonable and appropriate measures designed to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive Information Security Program (ISP) that includes logical and physical access management, vulnerability management, configuration management, incident monitoring and response, encryption of digital evidence uploaded, security education, risk management, and data protection. The Agency is responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Agency

Content. Login credentials are for Agency internal use only and Agency may not sell, transfer, or sublicense them to any other entity or person. The Agency agrees to be responsible for all activities undertaken by the Agency, Agency employees, Agency contractors or agents, and Agency end users that result in unauthorized access to the Agency account or Agency Content. Audit log tracking for the video data is an automatic feature of the Services that provides details as to who accesses the video data and may be downloaded by the Agency at any time. The Agency shall contact Axon immediately if an unauthorized third party may be using the Agency account or Agency Content or if account information is lost or stolen.

4.2. FBI CJIS Security Addendum. Axon agrees to the terms and requirements set forth in the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Security Addendum for the Term of this Agreement.

5. Axon's Support. Axon will make available updates as released by Axon to the Evidence.com Services. The Agency is responsible for maintaining the computer equipment and Internet connections necessary for use of the Evidence.com Services.

5.1. Support of Android Applications. For Android applications, including Axon View, Axon Device Manager, and Axon Capture, Axon will use reasonable efforts to continue supporting previous version of such applications for 45 days after the change. In the event Agency does not update their Android application to the most current version within 45 days of release, Axon may disable the application or force updates to the non-supported application.

6. Data Privacy. Axon will not disclose Agency Content or any information about the Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content so the Agency may file an objection with the court or administrative body. The Agency agrees to allow Axon access to certain information from the Agency in order to: (a) perform troubleshooting services upon request or as part of Axon's regular diagnostic screenings; (b) enforce this agreement or policies governing use of Evidence.com Services; or (c) perform analytic and diagnostic evaluations of the systems.

7. Data Storage. Axon will determine the locations of the data centers in which Agency Content will be stored and accessible by Agency end users. For United States customers, Axon will ensure that all Agency Content stored in the Evidence.com Services remains within the United States, including any backup data, replication sites, and disaster recovery sites. Axon may transfer Agency Content to third parties for the purpose of storage of Agency Content. Third party subcontractors responsible for storage of Agency Content are contracted by Axon for data storage services. Ownership of Agency Content remains with the Agency.

For use of an Unlimited Evidence.com License, unlimited data may be stored in the Agency's Evidence.com account only if the data originates from an Axon Body Worn Camera or Axon Capture device. Axon reserves the right to charge additional fees for exceeding purchased storage amounts or for Axon's assistance in the downloading or exporting of Agency Content. Axon may place into archival storage any data stored in the Agency's Evidence.com accounts that has not been viewed or accessed for 6 months. Data stored in

archival storage will not have immediate availability, and may take up to 24 hours to access.

- 8 **Suspension of Evidence.com Services.** Axon may suspend Agency access or any end user's right to access or use any portion or all of the Evidence.com Services immediately upon notice, in accordance with the following:
- 8.1. The Termination provisions of the Master Service Agreement apply;
 - 8.2. The Agency or an end user's use of or registration for the Evidence.com Services (i) poses a security risk to the Evidence.com Services or any third party, (ii) may adversely impact the Evidence.com Services or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent;
 - 8.3. If Axon suspends the right to access or use any portion or all of the Evidence.com Services, the Agency remains responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. Axon will not delete any of Agency Content on Evidence.com as a result of a suspension, except as specified elsewhere in this Agreement.
- 9 **Software Services Warranty.** Axon warrants that the Evidence.com Services will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. Axon disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to the Evidence.com Services.
- 10 **License Restrictions.** Neither the Agency nor any Agency end users (including, without limitation, employees, contractors, agents, officers, volunteers, and directors), may, or may attempt to: (a) permit any third party to access the Evidence.com Services, except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Evidence.com Services; (c) reverse engineer, disassemble, or decompile the Evidence.com Services or apply any other process or procedure to derive the source code of any software included in the Evidence.com Services, or allow any others to do the same; (d) access or use the Evidence.com Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas; (e) copy the Evidence.com Services in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Evidence.com Services, except as expressly permitted in this Agreement; (g) resell, rent, loan, or sublicense the Evidence.com Services; (h) access the Evidence.com Services in order to build a competitive product or service or copy any features, functions, or graphics of the Evidence.com Services; (i) remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within the Evidence.com Services or any copies of the Evidence.com Services; or (j) use the Evidence.com Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code. All licenses granted in this Agreement are conditional on continued compliance this Agreement, and will immediately and automatically terminate if the Agency does not comply with any term or condition of this Agreement. The Agency may only use Axon's trademarks in accordance with the Axon Trademark Use Guidelines (located at www.axon.com).
- 11 **After Termination.** Axon will not delete any Agency Content as a result of a termination

during a period of 120 days following termination. During this 120-day period the Agency may retrieve Agency Content only if all amounts due have been paid (there will be no application functionality of the Evidence.com Services during this 120-day period other than the ability to retrieve Agency Content). The Agency will not incur any additional fees if Agency Content is downloaded from Evidence.com during this 120-day period. Axon has no obligation to maintain or provide any Agency Content after this 120-day period and will thereafter, unless legally prohibited delete all of Agency Content stored in the Evidence.com Services. Upon request, Axon will provide written proof that all Agency Content has been successfully deleted and fully removed from the Evidence.com Services.

- 12 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's Data Egress Services, will result in additional fees, unless agreed by the Parties, and Axon will not warrant or guarantee data integrity or readability in the external system.

Professional Services Appendix

- 1 **Professional Services Term.** Amounts pre-paid for professional services as outlined in the Quote and the Professional Service Appendix must be used within 6 months of the Effective Date.
- 2 **Body Worn Camera 1-Day Service (BWC 1-Day).** The BWC 1-Day Package includes one day of on-site services and a professional services manager who will work closely with the Agency to assess the Agency's deployment scope and determine which services are appropriate. If more than one (1) day of on-site services is needed, additional on-site assistance is available for \$2,500 per day. The BWC 1-Day Package options include:

System set up and configuration (Remote Support)
<ul style="list-style-type: none">• Setup Axon Mobile on smart phones (if applicable)• Configure categories & custom roles based on Agency need• Troubleshoot IT issues with Evidence.com and Evidence.com Dock (Dock) access• Work with IT to install Evidence Sync software on Agency computers (if applicable)
Dock configuration
<ul style="list-style-type: none">• Work with Agency to decide ideal location of Dock setup and set configurations on Dock if necessary• Authenticate Dock with Evidence.com using "Administrator" credentials from Agency• Does not include physical mounting of docks
Axon instructor training (Train the Trainer)
Training for Agency's in-house instructors who can support the Agency's Axon camera and Evidence.com training needs after Axon's Professional Service team has fulfilled its contracted on-site obligations
End user go live training and support sessions
<ul style="list-style-type: none">• Assistance with device set up and configuration• Training on device use, Evidence.com and Evidence Sync
Implementation document packet
Evidence.com administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

- 3 **Body Worn Camera Virtual 1-Day Service (BWC Virtual).** The Axon BWC Virtual Package includes all items in the BWC 1-Day Service Package, except one day of on-site services.
- 4 **Out of Scope Services.** Axon is responsible to perform only the Services described on the Quote and in this Appendix. Any additional services will be considered out of the scope.
- 5 **Delivery of Services.**
- 5.1. **Hours and Travel.** Axon personnel will work within normal business hours, Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays, unless otherwise agreed in advance. All tasks on-site will be performed over a consecutive timeframe, unless otherwise agreed to by the Parties in advance. Travel time by Axon personnel to Agency premises will not be charged as work hours performed.

5.2. Changes to Services. Changes to the scope of Services must be documented and agreed upon by the Parties in a change order. Changes may require an equitable adjustment in the charges or schedule.

- 6 Authorization to Access Computer Systems to Perform Services.** The Agency authorizes Axon to access relevant Agency computers and network systems, solely for performing the Services. Axon will work diligently to identify as soon as reasonably practicable the resources and information Axon expects to use, and will provide an initial itemized list to the Agency. The Agency is responsible for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by the Agency.
- 7 Site Preparation and Installation.** Prior to delivering any Services, Axon will provide 1 copy of the then-current user documentation for the Services and related Products in paper or electronic form (**Product User Documentation**). The Product User Documentation will include all environmental specifications that must be met in order for the Services and related Products to operate in accordance with the Product User Documentation. Prior to the installation of Product (whether performed by the Agency or Axon), the Agency must prepare the location(s) where the Products are to be installed (**Installation Site**) in accordance with the environmental specifications set forth in the Product User Documentation. Following the installation of the Products, the Agency must maintain the Installation Site where the Products have been installed in accordance with the environmental specifications set forth in the Product User Documentation. In the event that there are any updates or modifications to the Product User Documentation for any Products provided by Axon under this Agreement, including the environmental specifications for the Products, Axon will provide the updates or modifications to Agency when they are generally released by Axon to Axon customers.
- 8 Acceptance Checklist.** Axon will present an Acceptance Form (**Acceptance Form**) upon completion of the Services. The Agency will sign the Acceptance Form acknowledging completion of the Services once the on-site service session has been completed. If the Agency reasonably believes that Axon did not complete the Services in substantial conformance with this Agreement, the Agency must notify Axon in writing of the specific reasons for rejection of the Services within 7 calendar days from delivery of the Checklist. Axon will address the issues and then will re-present the Acceptance Form for approval and signature. If Axon does not receive the signed Acceptance Form or a written notification of the reasons for the rejection of the performance of the Services within 7 calendar days of delivery of the Acceptance Form, the absence of the Agency response will constitute affirmative acceptance of the Services, and a waiver of any right of rejection.
- 9 Liability for Loss or Corruption of Data.** For any work performed by Axon transiting or making use of Agency's network, maintenance and functionality of the network are the sole responsibility of the Agency. In no event will Axon be liable for loss, damage, or corruption of Agency's network infrastructure from any cause.

Axon Interview Room Appendix

If Axon Interview Room is included on the Quote, this Axon Interview Room Appendix applies.

- 1 **Axon Interview Room Evidence.com Subscription Term.** The Evidence.com Subscription for Axon Interview Room (**Interview Room Subscription**) will begin after the first shipment of the Axon Interview Room hardware. If shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. For phased deployments, the Interview Room Subscription begins upon the shipment of the first phase, and subsequent phases will begin upon shipment of that phase.
- 2 **Statement of Work.** The Axon Interview Room Statement of Work (**Interview Room SOW**) attached to this Appendix will detail Axon's respect to the professional services deliverables. Axon is responsible to perform only the services described in this Interview Room SOW. Any additional services discussed or implied that are not defined explicitly by the Interview Room SOW will be considered outside the scope of this Agreement. Axon may subcontract any part of the Interview Room SOW to a qualified subcontractor.
- 3 **Axon Interview Room Warranty.** Axon Interview Room Products are covered under the applicable manufacturer's warranty.
 - 3.1. **Warranty Returns.** The terms and conditions in the "Warranty Returns" section of the main body of the MSPA apply to warranty returns related to Hardware Maintenance.
 - 3.2. **Product Repair or Replacement.** If Axon determines that a valid warranty claim is received within the Hardware Maintenance Term, Axon agrees to repair or replace the hardware that Axon determines in its sole discretion to be defective under normal use. Axon's sole responsibility under this warranty is to either repair or replace damaged or defective hardware with the same or like hardware, at Axon's discretion. Axon is not obligated to repair or replace hardware that is damaged as a result of intentional or deliberate damage.
- 4 **Hardware Maintenance Warranty Coverage.** If the Agency purchased Axon Interview Hardware Maintenance warranty coverage, the Axon Interview Room hardware listed in the Quote will receive extended warranty coverage during the term purchased in the Quote (**Hardware Maintenance Term**). The Hardware Maintenance Term start date begins upon the Agency's receipt of the hardware covered under the Hardware Maintenance. Hardware Maintenance only applies to the Axon Interview Room hardware listed in the Quote. The Agency may not buy more than one Hardware Maintenance for any one covered Product. Hardware Maintenance includes the extended warranty coverage described in the current hardware warranty. Hardware Maintenance warranty coverage starts at the beginning of the Hardware Maintenance Term and continues throughout the Hardware Maintenance Term and as long the Agency continues to pay the required annual fees for Hardware Maintenance.
 - 4.1. **Hardware Maintenance Termination.** If an invoice for Hardware Maintenance is more than 30 days past due Axon may terminate Hardware Maintenance. Axon will provide notification that Hardware Maintenance coverage is terminated. Once Hardware Maintenance coverage is terminated for any reason, then:
 - 4.1.1. Hardware Maintenance coverage will terminate as of the date of termination

and no refunds will be given.

4.1.2. Axon will not, and has no obligation to, provide future support or services for the hardware covered by Axon Interview Room Hardware Maintenance.

5 **Support.** Axon will provide remote customer service for troubleshooting hardware issues. In the event Axon deems it necessary, and at Axon's sole discretion, Axon will provide an on-site technician for support.

6 **Axon Interview Unlimited.** For use of an Axon Interview Room Unlimited Evidence.com License, unlimited data may be stored as part of the Axon Interview Room unlimited storage only if the data originates from Axon Interview Room hardware.

Axon Fleet Appendix

If Axon Fleet is included on the Quote, this Axon Fleet Appendix applies.

- 1 **Axon Fleet Evidence.com Subscription Term.** The Evidence.com Subscription for Axon Fleet will begin after the first shipment of the Axon Fleet hardware (**Axon Fleet Subscription**) if shipped in 1st half of the month, the start date is on the 1st of the following month. If shipped in the last half of the month, the start date is on the 15th of the following month. For phased deployments, the Axon Fleet Subscription begins upon the shipment of the first phase, and subsequent phases will begin upon shipment of that phase.
- 2 **Agency Responsibilities.** The Agency is responsible for ensuring its infrastructure and vehicles adhere to the minimum requirements needed to effectively operate Axon Fleet as established by Axon during the on-site assessment at the Agency's facility and/or in Axon's technical qualifying questions. The Quote is based upon the Agency's accurate representation of its infrastructure. Any inaccuracies the Agency provides to Axon regarding the Agency's infrastructure and vehicles may subject the Quote to change.
- 3 **CradlePoint.** If the Agency purchases CradlePoint Enterprise Cloud Manager, the Agency is responsible for complying with the CradlePoint end user license agreement. The Agency acknowledges that the term of the CradlePoint license may differ from the term of the Evidence.com license. The Agency further acknowledges that CradlePoint installation services are not within the scope of this Agreement. All CradlePoint hardware is warrantied under CradlePoint's manufacturer's warranty. In the event that the Agency requires support for its CradlePoint hardware, the Agency will contact CradlePoint directly.
- 4 **Statement of Work.** If the Agency has purchased installation services for Axon Fleet, the Statement of Work (**Fleet SOW**) attached to this Appendix will detail Axon's deliverables to the Agency with respect to the installation of Axon Fleet and any related hardware. Axon is responsible to perform only the services described in this Fleet SOW. Any additional services discussed or implied that are not defined explicitly by the Fleet SOW will be considered out of the scope. Axon may subcontract any part of the Fleet SOW to a qualified subcontractor.
- 5 **Warranty Coverage.** Axon's standard Hardware Warranty applies to Axon Fleet when installed by Axon trained personnel.
 - 5.1. If the Agency chooses (i) to install the Axon Fleet cameras and related hardware on its own without "train the trainer" services provided by Axon nor does not follow instructions provided by Axon during "train the trainer services", or (ii) a third party to install the hardware (collectively, **Third Party Installer**), Axon will not be responsible for Third Party Installer's failure to follow instructions relating to the implementation and use of Axon Fleet hardware, including (a) any degradation in performance that does not meet Axon's specifications or (b) any damage to the Axon Fleet hardware that occurs from such Third Party Install.
 - 5.2. Additional charges for Axon services may apply in the event Axon is required to (a) replace hardware that is damaged because of a Third Party Installer; (b) provide

extensive remote support; or (c) send Axon personnel to the Agency's site to replace hardware damaged by a Third Party Installer.

- 5.3.** If Agency utilizes a Third Party Installer or their own IT infrastructure Axon is not responsible for any system failure, including but not limited to, the failure of the Axon Fleet hardware to operate in accordance with Axon's specifications. If Agency utilizes a Third Party Installer approved by Axon and such Third Party Installer follows instructions provided by Axon during "train the trainer services," the preceding sentence of this Section 5.3 will not apply.

6 Fleet Wireless Offload Service.

- 6.1. License Grant.** Axon grants a non-exclusive, royalty-free, worldwide perpetual right and license to use Fleet Wireless Offload Software (**Fleet WOS**), where "use" and "using" in this Agreement mean storing, loading, installing, or executing Fleet WOS exclusively for data communication with Axon Products for the number of server licenses purchased.
- 6.2. License Start Date.** The Fleet WOS term will begin upon the start of the Axon Fleet Evidence.com Subscription.
- 6.3. License Restrictions.** The Agency may not use Fleet WOS in any manner or for any purpose other than as expressly permitted by this Agreement. The Agency may not: (a) modify, alter, tamper with, repair, or otherwise create derivative works of Fleet WOS; (b) reverse engineer, disassemble, or decompile Fleet WOS or apply any other process or procedure to derive the source code of Fleet WOS, or allow any others to do the same; (c) access or use Fleet WOS in a way intended to avoid incurring fees or exceeding usage limits or quotas; (d) copy Fleet WOS in whole or part, except as expressly permitted in this Agreement; (e) use trade secret information contained in Fleet WOS, except as expressly permitted in this Agreement; (f) resell, rent, loan or sublicense Fleet WOS; (g) access Fleet WOS in order to build a competitive product or service or copy any features, functions or graphics of Fleet WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Fleet WOS or any copies of Fleet WOS. All licenses granted in this Agreement are conditional on continued compliance with this Agreement, and will immediately terminate if the Agency does not comply with any term or condition of this Agreement.
- 6.4. Updates.** If the Agency purchases maintenance for Fleet WOS, Axon will make available updates and error corrections (**WOS Updates**) to Fleet WOS. WOS Updates may be provided electronically via the Internet or via media as determined solely by Axon. It is the Agency's responsibility to establish and maintain adequate access to the Internet in order to receive the updates. The Agency is responsible for maintaining the computer equipment necessary for use of Fleet WOS. The maintenance term will be detailed in the Quote.
- 6.5. Fleet WOS Support.** If the Agency has purchased Fleet WiFi Services, upon request by Axon, the Agency will provide Axon with access to the Agency's store and forward servers for the sole purpose of troubleshooting and maintenance.

7 Axon Fleet Unlimited Storage. For use of an Axon Fleet Unlimited Evidence.com License, unlimited data may be stored as part of the Axon Fleet unlimited storage only if the data originates from Axon Fleet hardware.

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- 8 **Axon Fleet Unlimited.** Axon Fleet Unlimited is a 5-year term. If the Agency purchases Axon Fleet Unlimited, the Axon Fleet camera hardware is covered by a 4-year extended warranty. Axon will also provide the Agency with a new front Axon Fleet camera and a new rear Axon Fleet camera that is the same Product or a like Product, at Axon's sole option (**Axon Fleet Upgrade Model**) 5 years after the start of the Axon Fleet Subscription. The Agency may elect to receive the Axon Fleet Upgrade Model anytime in the 5th year of the Axon Fleet Subscription Term so long as the final Axon Fleet Unlimited payment has been made.

If the Agency would like to change product models for the Axon Fleet Upgrade Model, then the Agency must pay the price difference in effect at the time of the upgrade between the MSRP for the offered Axon Fleet Upgrade Model and the MSRP for the model desired. The Agency will be responsible for the installation of any Axon Fleet Upgrade Models received from Axon.

- 9 **Fleet Unlimited Termination.** If an invoice for Axon Fleet Unlimited is more than 30 days past due or the Agency defaults on its payments for the Evidence.com Services then Axon may terminate Axon Fleet Unlimited and all outstanding Product related to Axon Fleet Unlimited. Axon will provide notification that Axon Fleet Unlimited coverage is terminated. Once Axon Fleet Unlimited coverage is terminated for any reason, then:

- 9.1. Axon Fleet Unlimited coverage will terminate as of the date of termination and no refunds will be given.
- 9.2. Axon will not and has no obligation to provide the free Axon Fleet Upgrade Models.
- 9.3. The Agency will be invoiced for, and is obligated to pay to Axon, the MSRP then in effect for all Spare Products provided under Axon Fleet Unlimited. If the Spare Products are returned within 30 days of the Spare Product invoice date, credit will be issued and applied against the Spare Product invoice.
- 9.4. The Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Axon Fleet Unlimited.

The "Delta Logo," the "Axon + Delta Logo," Axon, Axon Commander, Axon Convert, Axon Detect, Axon Dock, Axon Five, Axon Forensic Suite, Axon Interview, Axon Mobile, Axon Signal Sidearm, Evidence.com, Evidence Sync, TASER, and TASER CAM are trademarks of Axon Enterprise, Inc., some of which are registered in the US and other countries. For more information visit www.axon.com/legal. All rights reserved. © 2018 Axon Enterprise, Inc.