



# STAFF REPORT

DATE: OCTOBER 2, 2012  
 TO: HONORABLE MAYOR AND CITY COUNCIL  
 FROM: ROD FOSTER, CITY MANAGER *R. Foster*  
 PREPARED BY: STEVE WARD, POLICE CHIEF  
 SUBJECT: APPROVAL FOR THE PURCHASE OF 40 ELECTRONIC CONTROL DEVICES THROUGH TASER INTERNATIONAL FOR TASERS AND TASER CAMS ALONG WITH THE RELATED PERIPHERAL DEVICES

## RECOMMENDED ACTION

It is recommended that the City Council: (1) approve the purchase of 40 Electronic Control Devices through Taser International, to include Tasers and Taser Cams, along with the peripheral equipment; (2) concur in finding that such purchase without competitive bidding is in the best interest of the City and its administrative operations for the reasons stated below; and (3) authorize the City Manager to execute the attached agreements with any non-substantive revisions approved by the City Attorney.

## GOAL STATEMENT

The proposed action will provide police officers with much needed updated Tasers which will increase safety for officers and suspects, and potentially reduce litigation costs.

## BACKGROUND

In 2002, the Colton Police Department purchased a limited number of Electronic Control Devices (ECD's) through Taser International. In 2007 the Police Department purchased 35 new Tasers and assigned each officer their own device. The Taser and Taser Cam deployment to field personnel provided a manner in which to individually link a particular device to an officer, and in addition provided a video of any ECD use. These ECD's have now been in service for 5 years, and the cost of repair to continue their use is beginning to exceed the cost of replacement. It is foreseeable that the age of the units could result in a failure of the device or the loss of data. ECD's are designed to render a subject temporarily immobilized allowing officers to gain control of the subject with minimal injury to either party involved.

## ISSUES/ANALYSIS

The advantages of Taser technology are reductions in injuries to both suspects and law enforcement officers. The temporary incapacitation provides a window of opportunity for the officers to handcuff or restrain the subject, ending their resistive or aggressive behavior. It is estimated that 5% of Taser deployments prevent the use of lethal force. Suspect injuries are reduced by 60%, and 100% of Taser deployments potentially reduce officer injuries. These estimates are based on studies by the Department of Justice and various Law Enforcement agencies.

Our current policy provides criteria for Taser use, as well as the proper reporting procedures. We currently have one in-house department trainer to consistently provide follow-up training, as well as instruction to new officers. The main disadvantage of this device is the potential for an increase in litigation due to its use. Proper training and the diligent practice of following policy may assist in diminishing that litigation, as well as providing for a strong defense should such legal action be filed.

Taser International is the current vendor for our Department. In the past, we purchased Taser Cams to use as a tool to combat allegations of Taser misuse. The Taser Cam is an audio and video recording system that can be downloaded to our network for future reference, in the event of a complaint or legal proceeding.

Staff is recommending purchasing from Taser International again, without a competitive bidding process, and the Colton Municipal Code allows for this purchase. Colton Municipal Code Section 3.08.140 (H) (Purpose of Bidding is Otherwise Accomplished) provides that competitive bidding may be waived "when the City Manager determines that it is in the best interest of the City and its administrative operations to dispense with public bidding for non-public projects under this chapter." The City Manager and staff believe this finding can be made because Taser International has patented an operating system that is capable of launching dart projectiles from the device, as well as the ability to quickly convert to a close quarters "drive stun" system. In addition, the Taser system contains a video and audio recording system. The patented Taser device has not only been used successfully by the Colton Police Department since 2002, and the Department is pleased with its performance and injury reduction capabilities, it is used by the surrounding Law Enforcement agencies in the County.

The Department plans to use "EVIDENCE.COM Lite," a free online service to track and store videos and data files uploaded from the Taser devices. The Department will be required to accept the terms of the EVIDENCE.COM Master Service and Software Agreement. The City Manager and staff believe that the City is best served by not switching away from a successful product which is so critical to its public safety duties. Accordingly, staff recommends that the City Council concur in finding that making this purchase from Taser International without competitive bidding is in the best interest of the City and its administrative operations, and therefore approve the request to purchase the 40 Taser and Taser Cams with the peripheral equipment.

### **FISCAL IMPACTS**

Currently there are funds budgeted in the 2012/2013 fiscal year in the safety equipment account 100-6070-6071-1180 for this purchase.

Cost: \$54,151.89: This includes the 40 Taser and Taser Cams, extra cartridges, batteries, chargers, and holsters.

### **ALTERNATIVES**

1. Provide alternative direction to staff.

### **ATTACHMENTS**

1. Purchase quote from Taser International.
2. EVIDENCE.COM Master Service and EVIDENCE Sync Software Agreement.



Prepared By Bob Lovering Created Date 9/17/2012  
 Company Name TASER International Expiration Date 10/31/2012  
 Company Address 17800 N. 85th Street Quote Number 00002142  
 Scottsdale, AZ 85255-9603  
 US  
 Phone 480-515-6394  
 E-mail blovering@taser.com

**Customer Information**

Account Name Colton Police Department Email sdavis@ci.colton.ca.us  
 Contact Name Steve Davis Phone 909-370-5000

**Shipping and Billing Information**

Bill To Name Colton Police Department Ship To Name Colton Police Department  
 Bill To 650 N. LA CADENA DR. Ship To 650 N. LA CADENA DR.  
 Colton, CA 92324 Colton, CA 92324  
 US US

Part Number	Product	Quantity	Sales Price	Total Price
44973	HOLSTER, L, X26, BLACKHAWK, 44H015BK-L-B	1.00	USD 32.95	USD 32.95
44972	HOLSTER, R, X26, BLACKHAWK, 44H015BK-R-B	39.00	USD 32.95	USD 1,285.05
26750	TASER CAM, POWER MODULE US	40.00	USD 411.95	USD 16,478.00
26737	USB CABLE, VDPM	5.00	USD 0.00	USD 0.00
26523	X26E KIT - YELLOW/BLACK, DPM, W/O HOLSTER	40.00	USD 807.00	USD 32,280.00

Notes: \$50 credit for each X26 returned as part of a one Subtotal USD 50,076.00  
 time trade in program. Total Price USD 50,076.00  
 35 X\$50 +\$1750 Credit Tax USD 3,880.89  
 Shipping and Handling USD 195.00  
 Grand Total USD 54,151.89

**Quote Acceptance:**

Printed Name \_\_\_\_\_ Date \_\_\_\_\_  
 Signature \_\_\_\_\_ PO#: \_\_\_\_\_

**TASER International, Inc.'s Sales Terms and Conditions**  
**Direct Sales to End User Purchasers**  
 (applies to all direct purchases by internet or phone)  
 (Effective June 27, 2011)

These Sales Terms and Conditions apply to your purchase of all TASER International, Inc. ("TASER") products purchased directly from TASER. Goods sold by TASER are expressly subject to and conditioned upon the terms and conditions set forth below. By accepting delivery of the product, you accept and are bound to these Sales Terms and Conditions. Any different or additional terms set forth by you, whether in your purchase order or another communication, are expressly objected to and will not be binding on TASER unless agreed to in writing by an authorized officer of TASER.

**Product Background Checks.** Some products require that you complete a background check before you will be allowed to purchase the

1.888.827.3788. You must complete and pass the C2 ECD background check to obtain the activation code for the device.

**AFID Registration.** For the TASER ECDs and TASER cartridges, you must complete the product registration and, where applicable, return to TASER the Anti-Felon Identification ("AFID") registration card that is included with the TASER product. Failure to promptly return the AFID registration card may void any TASER warranty.

**Final Sales.** All sales are final and no refunds are allowed for TASER law enforcement, military, and corrections products, cartridges and accessories.

**Return Policies; Exchanges for TASER Citizen Products.** All sales are final and no refunds or exchanges are allowed, except as provided by state or federal law and as specified below:

**15-Day Return Period for Certain ECDs, Cartridges and Accessories:** The TASER C2 ECD, M26C™ ECD, X26C™ ECD, TASER cartridges for citizen products, and accessories for citizen products that are unopened and still in their sealed package may be returned or exchanged within 15 days from the date of receipt of the product for a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees. For a TASER C2 ECD to qualify under the 15-day return policy it must not be activated and no attempted activation may have been made. Any product returned to TASER without prior authorization from TASER will be considered an unauthorized return, and the customer will not receive credit for the product and TASER will not ship the product back to you.

**TASER will not accept any exchanges or returns of TASER C2 ECDs that have been activated or where activation was attempted.**

**Restocking Fees:** Unless the product is defective or the return is a direct result of a TASER error, TASER may charge a restocking fee of up to 15% of the purchase price paid, plus any applicable sales tax.

**How to Return a Product:** Before returning a product, you must first contact TASER customer service and obtain a Return Material Authorization ("RMA") number before the end of the applicable return period. TASER will not accept returns without an RMA number. See the Product Warranty, [www.TASER.com](http://www.TASER.com), or contact TASER at 800.978.2737 or +1.480.905.2000 (for International callers) for information on how to obtain an RMA number. NOTE: You must ship the product to TASER within 5 days of the date that TASER issues the RMA number as follows:

- ship back all products you are seeking to return to TASER and for which you received a RMA number. For partial returns, your credit may be less than the invoice or individual component price due to bundled or promotional pricing or any unadvertised discounts or concessions;
- return the products in their original packaging, in as-new condition, along with any media, documentation, and any other items that were included in your original shipment;
- ship the products at your expense, and insure the shipment or accept the risk of loss or damage during shipment;
- place the RMA number on the outside of the package;
- include proof of purchase of the product (receipt, purchase order, or invoice); and
- include your name, address, and phone number of where to send the exchange item or the product credit or refund.

Upon receipt of your return, TASER will issue a credit or a refund of the purchase price paid, less shipping and handling, and any applicable restocking fees subject to this policy.

If you fail to follow the return or exchange instructions and policies provided by TASER, TASER is not responsible for product that is lost, damaged, modified, or otherwise processed for disposal or resale.

**Payment Terms.** Terms of payment are within TASER's sole discretion, and unless otherwise agreed to by TASER, payment must be received by TASER prior to TASER's acceptance of an order. Payment for the products will be made by credit card, wire transfer, or some other prearranged payment method unless credit terms have been agreed to by TASER. Invoices are due and payable within the time period noted on your invoice, measured from the date of the invoice. TASER may invoice parts of an order separately. Your order is subject to cancellation by TASER, in TASER's sole discretion. TASER is not responsible for pricing, typographical, or other errors in any offer by TASER and reserves the right to cancel any orders resulting from such errors.

**Taxes.** Unless you provide TASER with a valid and correct tax exemption certificate applicable to your purchase of product and the product ship-to location, you are responsible for sales and other taxes associated with the order.

**Shipping; Title; Risk of Loss.** Shipping and handling are additional unless otherwise expressly indicated at the time of sale. TASER reserves the right to make partial shipments unless specifically stated otherwise on your purchase order. Products may ship from multiple locations. Title and risk of loss passes from TASER to you on upon delivery to the common carrier by TASER. Any loss or damage that occurs during shipment is your responsibility. You must promptly file claims for damaged items with the freight carrier. Shipping dates are estimates only. Delivery is typically 2-6 weeks after receipt of order or payment.

**Excusable delays.** TASER will use commercially reasonable efforts to deliver all products ordered by you as soon as reasonably practicable. In the event of interruption of any delivery due to causes beyond the reasonable control of TASER, including but not limited to force majeure, fire, labor disturbances, riots, accidents, or inability to obtain necessary materials or components, TASER has the right, in its sole discretion and upon oral or written notice to you, to delay or terminate the delivery.

**Not For Resale or Export.** You agree and represent that you are buying only for your own use only, and not for resale or export. Shipping TASER products out of the United States is restricted by U.S. federal law and neither the TASER product nor its technology can be exported out of the U.S. without a validated export license issued by the U.S. Department of Commerce and a signed BIS-711 on file with TASER.

**Regulations and Restrictions.** You agree to comply with all applicable laws, codes and license requirements, and controls of the United States and other applicable jurisdictions in connection with the use of TASER products including your acceptance of responsibility for the payment of any relevant taxes or duties. Please go to the TASER website ([www.TASER.com](http://www.TASER.com)) or contact TASER's Customer Service Department for a list of known regulations and restrictions regarding the sale, possession, and use of TASER products. You are responsible for understanding and verifying all local laws, regulations, and restrictions.

**Warranty; Exclusions and Limitations; Release.** See TASER's website ([www.TASER.com](http://www.TASER.com)) for warranty provisions, warranty exclusions, release and any limitations of liability. To the extent permitted by law, TASER's warranty and the remedies set forth in that warranty are

...and in lieu of an express warranty, remedies, and conditions, whether oral or written, statutory, express or implied, as permitted by applicable law, TASER specifically disclaims any and all statutory or implied warranties, including without limitation, warranties of merchantability, design, fitness for a particular purpose, arising from a course of dealing, usage or trade practice, warranties against hidden or latent defects, and warranties against patent infringement. If TASER cannot lawfully disclaim statutory or implied warranties than to the extent permitted by law, all such warranties are limited to the duration of the express warranty described above and limited to the other provisions contained in the warranty document.

The remedies provided for in the warranty are expressly in lieu of any other liability TASER may have. TASER'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 TASER product will not exceed the purchase price paid to TASER by Buyer for the product, notwithstanding third party purchases. In no event will TASER 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, even if TASER has been advised of the possibility of those damages or if those damages could have been reasonably foreseen, and notwithstanding any failure of essential purpose of any exclusive remedy provided in the warranty. Some local laws do not allow for the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you. TASER disclaims any representation that it will be able to repair any product under this warranty or make a product exchange without risk to or loss of programs or data.

Buyer agrees to release and save TASER harmless from any and all liability arising out of the deployment, use or misuse of the TASER product, including any claims for damages and personal injuries. Buyer agrees to assume all risks of loss and all liability for any damages and personal injury which may result from the deployment, use or misuse of the TASER product. TASER is not liable for the failure of the TASER product to perform and TASER is not liable for any claims made by a third party or by Buyer for or on behalf of a third party.

**Product Warnings.** See TASER's website at [www.TASER.com](http://www.TASER.com) for the most current product warnings.

**Proprietary information.** You agree that TASER has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute TASER products, and that you will not directly or indirectly cause any proprietary rights to be violated.

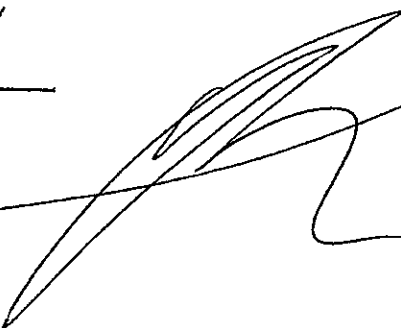
**Design changes.** TASER reserves the right to make changes in design of any of its products without incurring any obligation to notify you or to make the same change to products previously purchased.

**Severable Provisions.** If any provision of these Sales Terms and Conditions is found by a court of competent jurisdiction to be invalid or unenforceable, then the remainder will have their full force and effect and the invalid provision will be modified or partially enforced by the court to the maximum extent permitted by law to effectuate the purpose of this agreement.

**Entire Agreement.** These Sales Terms and Conditions constitute the entire agreement between the parties. These Sales Terms and Conditions supersede and replace any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this agreement. Any prior or extrinsic representations or agreements are intended to be discharged or nullified.

**Governing law.** ~~The laws of the State of Arizona, U.S.A. govern this transaction and agreement, without regard to conflicts of law.~~

M26C™, X26C™, 'Protect Life' and © are trademarks of TASER International, Inc., and C2® and TASER® are registered trademarks of TASER International, Inc., registered in the U.S.  
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REVISED 9/25/12 Robert Carr  
"the laws of the state of California"  


EVIDENCE.COM™ Master Service and

EVIDENCE Sync™ Software Agreement

(Effective May 24, 2011)

(On-line version)

Thank you for considering EVIDENCE.COM™ Services. By clicking the "I Agree" button or using the Services and Software you agree that you have read and understand this EVIDENCE.COM Master Services and EVIDENCE Sync™ Software Agreement ("Agreement") and you accept and agree to be bound by the following terms and conditions. If you are downloading Services and Software on behalf of an agency, government entity, company, partnership or other legal entity, you represent and warrant that you have authority to bind that entity to these terms and conditions. If you do not have this authority, do not download the Services or Software. If you disagree with any of the terms below, we do not grant you the right to use the Services and Software and you should click "Cancel" to exit the installer. In addition, you must immediately discontinue all use of the Services and Software and any related services, materials, and documentation.

#### 1. Definitions.

"Affiliate" means any entity which is part of your Agency, governmental structure, or directly or indirectly controls, is controlled by, or is under common control with you or your agency. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agency", "you" or "your" means the legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

"Agency Data" means all electronic data, videos, audio recordings, or information submitted by you to the Services.

"Designated Users" means individuals who are authorized to use the Services and who have been supplied user identifications and passwords by you (or by TASER at your request).

"EVIDENCE.COM Pro Service" means the subscription Service which allows Designated Users to integrate EVIDENCE.COM with the TASER® AXON™ recording device and upload video image and document files to EVIDENCE.COM, This Service also incorporates all the functionality provided in the EVIDENCE.COM Lite Service.

"EVIDENCE.COM Lite" means a free Service which allows Designated Users to upload files and videos from the X26™ ECD, X3® ECD, and TASER CAM™ recorder to EVIDENCE.COM.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Purchase Order" means the ordering documents for purchases under this Agreement, including any addendums, entered into between you and TASER from time-to-time. By issuing a Purchase Order, or using the Services in connection with a Test and Evaluation, you agree to the terms of this Agreement. The terms of this Agreement take precedence over any terms of your Purchase Orders.

"Purchased Services" means Services and Software that you or your Affiliates purchase under a Purchase Order for the EVIDENCE.COM Pro Service.

"Services" means the online, web-based applications, software, and platform provided by TASER via <http://www.Evidence.com> or other designated websites, excluding Third Party Applications.

"Software" means the EVIDENCE SYNC software.

"TASER" means TASER International, Inc.

"Third-Party Applications" means online, web-based applications and offline software products that are provided by third parties, interact with the Services or Software, and are identified as third-party applications, including but not limited to those listed on the Application Exchange.

## 2. Services.

2.a. EVIDENCE.COM Lite. EVIDENCE.COM Lite is a free Service which allows Designated Users from Agencies to upload files and videos from the X26™ ECD, X3® ECD, and TASER CAM™ recorder to EVIDENCE.COM. EVIDENCE.COM Lite does not support data uploads from the TASER AXON recording system or any other media. TASER will make the EVIDENCE.COM Lite Service available to your Designated Users pursuant to this Agreement. You can utilize the EVIDENCE.COM Lite Service as long as you abide by the terms of this Agreement and as long as your account is not terminated.

### 2.b. EVIDENCE.COM Pro Service.

2.b.i. Test and Evaluation. If you signed up for a free test and evaluation of the EVIDENCE.COM Pro Service, you are granted a limited non-exclusive license to use the Service and Software for the term of the trial period ("Trial Term"). Upon the expiration of the Trial Term you must purchase a subscription for the EVIDENCE.COM PRO Services to continue to use the Service and access your Agency Data. Upon request by you made within 45 days after the termination of the Trial Term, TASER will make available to you the Agency Data for download for six (6) months after the termination of the Trial Term. If you fail to provide TASER notice in this 45 day period, then TASER has no obligation to maintain or provide any Agency Data and will thereafter, unless legally prohibited, delete all Agency Data in TASER's EVIDENCE.COM systems. In the event your Agency obtains Purchased Services after the Trial Term, your Agency will have the option to continue using the existing Agency Data stored on EVIDENCE.COM Pro Service for the Term of this Agreement.

2.b.ii. Provision of Purchased Services. TASER will make the Purchased Services available to your Designated Users pursuant to this Agreement. You agree that your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by TASER regarding future functionality or features of the Services. You can utilize the Purchased Services as long as you abide by the terms of this Agreement and as long as your account is not terminated.

2.b.iii. User Subscriptions. Purchased Services are purchased as subscriptions based on the number of AXON™ recorders used with the Services. Subscriptions may be accessed only by Designated Users. Additional Designated Users may be added during the Term at no additional cost and the added Designated User accounts will terminate on the same date as the pre-existing subscriptions.

### 3. EVIDENCE Sync Software License Grant.

3.a. User License. Designated Users are granted a non-exclusive, limited license to access the Software and to use the Software for the Term of this Agreement. If you are using the Software to upload data from a TASER® electronic control device ("ECD") such as a TASER X26, X3 or a TASER CAM recorder solely in connection with the Services described in this Agreement, your Software License and use of Services are free of charge in the United States when utilizing EVIDENCE.COM Lite.

3.b. Software License Restrictions. You are not licensed or permitted under this Agreement to do any of the following: (i) modify, adapt, translate, rent or sublicense (including offering the Service or Software to third parties on an applications service provider or time-sharing basis); (ii) assign, loan, resell, transfer or distribute the Service or Software, or related materials or create derivative works based upon the Service or Software or any part thereof; (iii) network the Service or Software, (iv) copy the Service or Software in whole or part, except as expressly permitted in this Agreement; or (v) use trade secret information contained in the Service or Software. You agree not to (and not to permit others to): (i) decompile, disassemble, or otherwise reverse engineer the Software, except as otherwise expressly permitted by applicable law; or (ii) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright notices) of TASER or its licensors on or within the Service, Software, or any copies of the Service or Software.

4. Support. TASER may make available to you updates and error corrections (collectively, "Updates") to the Software and Services. Updates may be provided electronically via the Internet or via media (e.g., CD-ROM) as determined solely by TASER. It is your responsibility to establish and maintain adequate access to the Internet in order to receive the Service and Software updates. TASER does not provide Internet Service Provider (ISP) services. You are responsible for maintaining the computer equipment necessary for your use of the Services and Software. At its sole discretion, TASER may provide technical support for the current and prior release(s)/version(s) of the Software for a period of six (6) months following the date the subsequent release/version is made generally available.

### 5. Term and Termination.

5.a. Term. The term of this Agreement is for one (1) year, unless otherwise agreed in writing by the parties ("Term"). For EVIDENCE.COM Lite Services, the Term commences on the date of your first login to the Services. For EVIDENCE.COM Pro Services, the Term commences on the date of your Agency's Purchase Order or seven (7) calendar days after the first AXON Tactical Computer ("ATC™") is shipped to the Agency from TASER, whichever occurs last. If neither party gives notice of cancellation sixty (60) days prior to the end of a Term, the Term will automatically renew for additional successive Terms of one (1) year each ("Renewal Term").

5.b. Termination. This Agreement may be terminated by TASER immediately and without notice if you fail to comply with any term or condition of this Agreement or if you become insolvent or undergo an insolvency event. Upon termination, TASER will have no obligation to refund to you any fees paid by you

5.c. Return of Agency Data. Upon request by you made within 45 days after the effective date of termination of this Agreement, TASER will make available to you the Agency Data for download for six (6) months after the termination of the Agreement. If you fail to provide TASER notice in this 45 day period, then TASER has no obligation to maintain or provide any Agency Data and will thereafter, unless legally prohibited, delete all Agency Data in TASER's EVIDENCE.COM systems.

## 6. Use of Services and Software.

6.a. TASER's Responsibilities. TASER will provide the Services specified in this agreement and in your Purchase Order, if applicable. TASER's Support includes: (i) providing basic support for the Services at no additional charge, or upgraded support if purchased separately, (ii) use of commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (TASER will give at least 8 hours notice and will schedule, to the extent practicable, any downtime from 6:00 p.m. PST Friday to 3:00 a.m. PST Monday), or (b) any unavailability caused by circumstances beyond TASER's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving TASER employees), or Internet service provider failures or delays; and (iii) provide the Services only in accordance with applicable laws and government regulations.

6.b. Agency Responsibilities. Agency: (i) is responsible for the Designated Users' compliance with this Agreement; (ii) is solely responsible for the accuracy, quality, integrity and legality of Agency Data and of

the means by which Agency acquired the Agency Data; (iii) is responsible for maintaining the security of the user names and passwords of your Designated Users using the Service; (iv) will use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify TASER promptly of any unauthorized access or use; and (v) will use the Services only in accordance with applicable laws and government regulations. Agency must not: (i) make the Services available to anyone other than Designated Users; (ii) sell, resell, rent or lease the Services; (iii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (iv) use the Services to store or transmit malicious code, (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or (vi) attempt to gain unauthorized access to the Services or related systems or networks. Services may be subject to other limitations that are specified on <http://www.EVIDENCE.com>.

## 7. Fees and Payment.

7.a. User Fees. Agency must pay all fees specified for the Purchased Services as stated in Agency's Purchase Order(s). Fees are based on the Purchased Services and not actual usage. Payment obligations are non-cancelable and fees paid are non-refundable. Any renewal of the Term of this Agreement will result in acceptance of the fees for the Purchased Services for the Renewal Term at the same rate as the prior Term unless notice of a fee change has been given by TASER at least 30 days prior to the Renewal Term.

7.b. Additional Fees. TASER reserves the right to charge an additional fee for uploading data from any non-TASER device or from a non-U.S. location.

7.c. Invoicing and Payment. Agency will provide TASER with a valid Purchase Order for the Purchased Services. TASER will invoice the Agency. Payment terms are net 30 days for approved credit. Past due amounts are subject to late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date payment was due until the date paid. If a delinquent account is sent to collections, you are responsible for all collection and attorney fees. TASER, at its sole discretion and with prior notice to you, may condition future subscription renewals on payment terms shorter than those specified in this section.

7.d. Suspension of Service and Acceleration. If any amount owing by you under this Agreement is 30 days or more overdue, TASER may, without limiting its other rights and remedies, accelerate any unpaid

fees so that all obligations become immediately due and payable, and suspend Services to you until all amounts are paid in full.

7.e. Taxes. Unless otherwise stated, fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible either for providing TASER with a valid tax exemption certificate authorized by the appropriate taxing authority or paying all Taxes associated with your purchases. If TASER has the legal obligation to pay or collect Taxes for which you are responsible, the appropriate amount will be invoiced to and must be paid by you. TASER is solely responsible for taxes assessable against it based on its income, property and employees.

## 8. THIRD-PARTY PROVIDERS.

8.a. Acquisition of Third-Party Products and Services. TASER may offer Third-Party Applications for sale at <http://www.Evidence.com>. Any acquisition by you of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between you and any third-party provider, is solely between you and the applicable third-party provider. TASER does not warrant or support third-party products or services, whether or not they are designated by TASER as "certified" or otherwise, except as specified in a Purchase Order. No purchase of third-party products or services is required to use the Services.

8.b. Third-Party Applications and Your Data. If you install or enable Third-Party Applications for use with Services, you acknowledge that TASER may allow providers of those Third-Party Applications to access Agency Data as required for the interoperation of the Third-Party Applications with the Services. TASER is not responsible for any disclosure, modification or deletion of Agency Data resulting from any access by Third-Party Application providers. The Services allow you to restrict access by restricting Designated Users from installing or enabling Third-Party Applications for use with the Services.

## 9. Proprietary Rights.

9.a. Reservation of Rights. TASER owns all right, title and interest in and to the Services and Software, including without limitation all Intellectual Property Rights. "Intellectual Property Rights" means any and all patent rights, copyright, trade secrets, trade and service marks, design rights, rights in or relating to

databases, rights in or relating to TASER confidential information, and any other intellectual property rights throughout the world, whether registered or unregistered and including applications for any such rights. No rights are granted to you or your Designated Users other than those expressly set forth in this Agreement.

9.b. Restrictions. You must not: (i) permit any third party to access the Services and Software except as permitted in this Agreement; (ii) create derivative works based on the Services and Software; (iii) copy, frame or mirror any part or content of the Services or Software, other than for your own internal business purposes; (iv) reverse engineer the Services or Software; or (v) access the Services or Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services or Software.

9.c. Trademarks. You agree not to, and agree not to allow third parties to, remove, obscure, or alter TASER's copyright notice, trademark, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software or Services.

9.d. Ownership of Agency Data. As between TASER and you, you exclusively own all rights, title and interest in and to all of Agency's Data.

9.e. Suggestions. TASER has a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services or Software any suggestions, enhancement requests, recommendations, or other feedback provided by you, including any Designated Users, relating to the operation of the Services or Software.

9.f. Federal Government End Use Provisions. TASER provides the Services and Software, including related software and technology, for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Services and Software include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with TASER to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## 10. CONFIDENTIALITY.

10.a. Confidential Information. "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Agency Data stored on <http://www.Evidence.com> or the Agency's designated URL. TASER Confidential Information includes business and marketing plans, technology and technical information, product plans and designs, and business processes. However, Confidential Information (other than Agency Data) does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) was independently developed by the Receiving Party. Except as expressly set forth in this Agreement, no license or other rights to Confidential Information are granted or implied by either party.

10.b. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party: (i) the Receiving Party must use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) the Receiving Party must limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those in this Agreement.

10.c. Protection of Agency Data. Without limiting the above, TASER will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Agency Data stored on <http://www.Evidence.com> or the Agency's designated URL. TASER will not: (i) modify Agency Data; (ii) disclose Agency Data except as expressly permitted in writing by Agency, unless directed otherwise by a court order; or (iii) access Agency Data except to provide the Services or prevent or address service or technical problems, or at your request in connection with support matters.

## 11. WARRANTIES AND DISCLAIMERS.

11.a. Service Warranty. TASER warrants that the Services will perform materially in accordance with the description defined at <http://www.Evidence.com> during the Term. For any breach of warranty, TASER's entire liability and your exclusive remedy is for TASER to use commercially reasonable efforts to repair the defect in a commercially reasonable time period.

11.b. Limited Software Warranty. TASER warrants that Software will operate substantially as described in the related documentation for a period of ninety (90) days from the date of this Agreement or the date of the Purchase Order, whichever occurs last ("Software Warranty Period"). If the Software does not operate as warranted due to a defect in the software during the Warranty Period, TASER's sole liability and your exclusive remedy is for TASER to use commercially reasonable efforts to repair the defect in a commercially reasonable time period.

11.c. Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 11A and 11B ABOVE, THE SERVICES AND SOFTWARE, AND ANY CONTENT ACCESSIBLE THROUGH THE SERVICES OR SOFTWARE ARE PROVIDED "AS-IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TASER, TASER'S AFFILIATES, LICENSORS, PARTICIPATING FINANCIAL INSTITUTIONS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DEALERS AND SUPPLIERS (COLLECTIVELY, "SUPPLIERS") DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, SOFTWARE, CONTENT, AND RELATED MATERIALS, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, AND NON-INFRINGEMENT. TASER DOES NOT WARRANT THAT THE SERVICES OR SOFTWARE ARE FREE FROM BUGS, VIRUSES, INTERRUPTION, OR ERRORS, OR THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO 90 DAYS FROM THE DATE OF PURCHASE OR DELIVERY OF THE SOFTWARE OR SERVICES, AS APPLICABLE. HOWEVER, SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE-TO-STATE.

YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SOFTWARE, SERVICES, OR CONTENT IS IN ACCORDANCE WITH APPLICABLE LAW. All warranties or guarantees given or made by TASER with respect to the Software and Services are solely for the benefit of your Designated Users and are not transferable and are null and void if you breach any term or condition of this Agreement.

12. LIMITATION OF LIABILITY AND DAMAGES. THE ENTIRE CUMULATIVE LIABILITY OF TASER AND TASER'S SUPPLIERS FOR ANY REASON ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT EXCEED THE LESSER OF \$100,000 OR THE AMOUNT PAID BY YOU FOR PURCHASED SERVICES IN THE 6 MONTHS PRECEDING THE INCIDENT. THE FOREGOING DOES NOT LIMIT AGENCY PAYMENT OBLIGATIONS UNDER SECTION 7 (Fees and Payment). TASER AND TASER'S SUPPLIERS ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES RELATING TO LOSS OF BUSINESS, TELECOMMUNICATION FAILURES, VIRUSES, SPYWARE, LOSS OF PROFITS OR INVESTMENT, USE OF THE EVIDENCE.COM SERVICE OR EVIDENCE SYNC SOFTWARE WITH HARDWARE OR OTHER SOFTWARE THAT DOES NOT MEET TASER'S SYSTEMS REQUIREMENTS OR THE LIKE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF TASER, TASER'S SUPPLIERS OR TASER'S REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN TASER AND YOU.

### 13. MUTUAL INDEMNIFICATION.

13.a. Indemnification by TASER. TASER will defend you against any claim, demand, suit, or proceeding ("Claim") made or brought against you by a third party alleging that the use of the Services or Software as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party, and will indemnify you for any damages finally awarded against you, and for reasonable attorneys' fees incurred by you in connection with any Claim; provided, that you: (i) promptly give TASER written notice of the Claim within ten (10) business days after receipt of the Claim; (ii) give TASER sole control of the defense and settlement of the Claim (provided that TASER may not settle any Claim unless the settlement unconditionally releases you of all liability); (iii) allow TASER to select, at its sole discretion, attorneys, including in-house attorneys of TASER, to represent your interests in defending the Claim; and (iv) provide to TASER all reasonable assistance.

13.b. Indemnification by You. You will defend TASER against any Claim made or brought against TASER by a third party alleging that Agency Data, or your use of the Services or Software in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and you will indemnify TASER for any damages finally awarded against TASER, and for reasonable attorneys' fees incurred by TASER in connection with any Claim; provided, that TASER: (i) promptly gives you written notice of the Claim within ten (10) business days after receipt of the Claim; (ii) gives you sole control of the defense and settlement of the Claim (provided that you may not settle

any Claim unless the settlement unconditionally release TASER of all liability); and (ii) provides to you all reasonable assistance.

13.c. Exclusive Remedy. This Section 13 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section.

#### 14. GENERAL PROVISIONS.

14.a. Notices. Notices to you will be addressed to the system administrator designated by you for your relevant Services account matters, and in the case of billing-related notices, to the relevant billing contact designated by you. All other notices required or allowed by this Agreement may be delivered in person, sent by certified mail, Federal Express, or other carrier service to the following addresses listed below. Notice sent by U.S. mail is deemed delivered 3 days after deposit with the U.S. Postal Service. Notice sent by Federal Express, carrier service, or cable is deemed received on the day receipted for by the party or its agent. Either party may change its address by giving written notice to the other party.

14.b. Entire Agreement; Modification. This Agreement, including any amendments, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary, no terms or conditions stated in your Purchase Order or other order documentation which conflict with the terms of this Agreement or will be incorporated into or form any part of this Agreement, and all such terms or conditions are null and void.

14.c. Severability. This Agreement is contractual and not a mere recital. Section 7 (Fees and Payment), 9 (Proprietary Rights), 10 (Confidentiality), 11 (Warranties and Disclaimers), 12 (Limitation of Liability and Damages), 13 (Mutual Indemnification), and 14 (General Provisions) survive any termination or expiration of this Agreement. If any part of this Agreement is held indefinite, invalid, or otherwise unenforceable, the rest of the Agreement will continue in full force and effect.

14.d. Voluntary Agreement. This Agreement was negotiated and executed voluntarily and is not the result of duress, fraud, undue influence or any threat of any kind. All parties had the opportunity to read and consider this Agreement, to consult with counsel, and fully understand the Agreement.

14.e. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

14.f. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

14.g. Export Compliance. Each party must comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing: (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports; and (ii) you will not permit anyone including Designated Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

14.h. Choice of Law. The validity, construction, interpretation, and administration of this Agreement will be governed by and must be interpreted under the laws of the State of Arizona, U.S.A., without regard to its choice-of-law provisions. The parties agree that in the event any action is commenced in connection with this Agreement, venue for the action or proceeding is proper only in a court of competent jurisdiction located in Maricopa County, Arizona, U.S.A. Each party waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

14.i. Litigation Costs. In the event of any legal action to enforce the provisions of this Agreement, the successful party in enforcing any provision of this Agreement will be awarded that party's reasonable attorneys' fees and costs.

14.j. Waiver. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided, operates as a waiver of any right, power, or remedy. No waiver of any term of this Agreement, or delay by a party in enforcing any term, will be deemed to be a continuing waiver of the term or of any other term of this Agreement.

14.k. Assignment. You must not, by operation of law or otherwise, assign any of your rights or delegate any of your obligations under this Agreement without the prior express written consent of TASER.

14.l. Headings. All headings are for reference purposes only and do not affect the interpretation of this Agreement.

14.m. Time is of the Essence. Time is of the essence in connection with all matters and obligations pertaining to this Agreement.

14.n. Signatory. Any signatory to this Agreement warrants and acknowledges that they are authorized by the entity on behalf of which the signatory is executing this Agreement to execute this Agreement on its behalf. This Agreement is effective when you click the "I Agree" button or when you begin to use the Services or Software, whichever occurs first.

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