



EVIDENCE.com Master Service Agreement City of Daytona Beach

13-142

This EVIDENCE.com Master Service Agreement (**Agreement**) is made and entered into by and between TASER International, Inc., a Delaware corporation (**TASER**) and the agency or entity specified below (**Agency**). In consideration of the mutual promises contained in this Agreement, TASER and Agency agree to all terms of the Agreement effective June 19th, 2013 (**Effective Date**).

Terms and Conditions

This EVIDENCE.com Master Service Agreement (**Agreement**) contains the terms and conditions that govern your access to and use of the Service Offerings and is an agreement between TASER International, Inc. (**TASER, we, us, or our**) and you or the entity you represent (**Agency or you**). This Agreement takes effect on the **Effective Date**. You represent to us that you are lawfully able to enter into contracts and if you are entering into this Agreement for an entity, such as the company, municipality, or government agency you work for, you represent to us that you have legal authority to bind that entity. Please see Section 14 for definitions of certain capitalized terms used in this Agreement.

1. Use of the Service Offerings.

1.1 Generally. You may access and use the Service Offerings in accordance with this Agreement. You will adhere to all laws, rules, and regulations applicable to your use of the Service Offerings, including the Acceptable Use Policy and the other Policies as defined in Section 14.

1.2 User Subscriptions. Service Offerings are purchased as subscriptions, and may only be accessed by End Users. Additional End Users may be added during the Term at the pricing in effect at the time of purchase of additional End Users, prorated for the duration of the subscription term. Additional End User accounts will terminate on the same date as the pre-existing subscriptions.

1.3 Your Account. To access the Services, you must create at least one administrator account associated with a valid e-mail address. All user accounts must also be associated with a valid email address. Unless explicitly permitted by the Service Terms, you may only create one account per email address. You are responsible for all activities that occur under your account, regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents) and, except to the extent caused by our breach of this Agreement, we and our affiliates are not responsible for unauthorized access to your account. You will contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen. You may access and download Your Content during the Term and in accordance with the terms of this Agreement. You may terminate your account and this Agreement in accordance with Section 7.2.

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

2 Changes.

2.1 To the Service Offerings. We may change, discontinue, or deprecate any of the Service Offerings (including the Service Offerings as a whole) or change or remove features or functionality of the Service Offerings from time to time. We will notify you of any material change to or discontinuation of the Service Offerings.

2.2 To the APIs. We may change, discontinue or deprecate any application program interfaces (**APIs**) for the Services from time to time but will use commercially reasonable efforts to continue supporting the

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previous version of any API changed, discontinued, or deprecated for 6 months after the change, discontinuation, or deprecation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).

3 Security and Data Privacy.

3.1 Security. Without limiting Section 11 or your obligations under Section 4, we will implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure. Security features for the Services will at a minimum conform with or be equal to those identified in our document titled "EVIDENCE.com Security Features" version 1.2, dated February 6, 2013.

3.2 Data Privacy. In order to operate and provide the Service Offerings, we collect certain information about and from you. The software sends non-personally identifiable information about Your Content, your IP addresses, information about Service performance, your devices, and your use. In particular, we may access or disclose information about or from you, in order to: (a) perform troubleshooting services for your account at your request; (b) protect our rights or property or that of our customers, including the enforcement of our agreements or policies governing your use of the Service Offerings; or (c) perform analytic and diagnostic evaluations of the systems. In addition, we may access or disclose information about or from you, to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction; provided that, to the extent permissible under law, we use reasonable efforts to give you advance notice of the required disclosure in order to enable you to prevent or limit disclosure.

3.3 Data Regions. TASER will determine the geographic region(s) in which Your Content will be stored and accessible by your End Users. We will not move Your Content from the selected regions without notifying you, unless required to comply with the law or requests of a governmental or regulatory body (including subpoenas and court orders).

3.4 Consent to Transfer of Content. By using the Service Offerings, you consent to the transfer of Your Content to third parties for the purpose of storage of Your Content. Third parties responsible for storage of Your Content are contracted by TASER for data storage services. Ownership of Your Content remains with you.

4 Your Responsibilities.

4.1 Your Content. You are solely responsible for the development, content, operation, maintenance, and use of Your Content. For example, you are solely responsible for:

- a. the uploading, management and deletion of Your Content;
- b. the accuracy, quality, integrity and legality of Your Content and of the means by which you acquired Your Content;
- c. setting of permissions, roles and responsibilities regarding Your Content;
- d. using commercially reasonable efforts to prevent unauthorized access to or use of the Service Offerings, and you will notify TASER promptly of any unauthorized access or use;
- e. compliance of Your Content with the Acceptable Use Policy, the other Policies, and the law; and
- f. any claims relating to Your Content;
- g. monitoring system use and storage levels by your designated End Users; and
- h. security of system due to the misuse, theft, or sharing passwords.

4.2 Prohibited Actions. You must not:

- a. make the Service Offerings available to anyone other than your designated End Users;
- b. use the Service Offerings 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;

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- c. use the Service Offerings to store or transmit malicious code;
- d. interfere with or disrupt the integrity or performance of the Service Offering or third-party data contained therein; or
- e. attempt to gain unauthorized access to the Service Offerings or related systems or networks.

4.3 Other Security and Backup. You are responsible for properly configuring and using the Service Offerings and taking your own steps to maintain appropriate security and access by your End Users to Your Content. You are responsible for maintaining the security of the user names and passwords of your End Users. Log-in credentials generated by the Services are for your internal use only and you may not sell, transfer or sublicense them to any other entity or person.

4.4 End User Violations. You are responsible for End Users' use of Your Content and the Service Offerings. You will ensure that all End Users comply with your obligations under this Agreement. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to Your Content and the Service Offerings.

5 Fees and Payment.

5.1 Service Fees. You are responsible for all fees specified in the Quote once signed by an authorized person at your agency. A Purchase Order may be submitted for the fees due in the Quote. Payment obligations are non-cancelable and fees paid are non-refundable, unless TASER (i) is in default, (ii) materially changes the Service Offerings to your material detriment, even where authorized herein; or (iii) terminates this Agreement as authorized by Section 7 for any reason other than your default. In any of the enumerated instances above you will be entitled to a return of any prepaid fees on a pro-rata basis beginning from the date of TASER's default, material change in Service Offerings, or termination. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

5.2 Additional Fees. Except as expressly provided in the Quote or Sales Terms and Conditions, we reserve the right to charge an additional fee for exceeding your allotted storage amounts based on your contract or purchase agreement with TASER. We also reserve the right to charge additional fees for TASER's assistance in the downloading or exporting of Your Content. We also reserve the right to charge additional fees for future modules and integrations which are in addition to the items listed in your contract or purchase agreement with TASER.

5.3 Invoicing and Payment. Unless otherwise noted on the Quote, all fees for Service Offerings are due and payable within 30 days. At your election, the Service Offering may be billed annually, which will be noted on the Quote. If annual billing is selected, you agree to be invoiced annually absent submission of a separate Purchase Order from your agency. Payment terms are net 30 days for approved credit. We may charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments. In addition, at our sole discretion and with prior notice to you, we may condition future subscription renewals on payment terms shorter than those specified in this section.

5.4 Suspension of Service. If any amount owed by you under this Agreement is 30 days or more overdue, we may, without limiting our other rights and remedies, suspend the Service Offerings and your access to the Service Offerings until all amounts are paid in full.

5.5 Taxes. All fees and charges payable by you are exclusive of applicable taxes and duties, including VAT and applicable sales tax. If you are legally entitled to an exemption from any sales, use, or similar transaction tax, you are responsible for providing us with legally-sufficient tax exemption certificates for each taxing jurisdiction. We will apply the tax exemption certificates to charges under your account occurring after the date we receive the tax exemption certificates. If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net

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amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, you will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority. If we have 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. We are solely responsible for taxes assessable against us based on TASER's income, property and employees.

6 Temporary Suspension.

6.1 Generally. We may suspend your or any End User's right to access or use any portion or all of the Service Offerings immediately upon notice to you if we determine:

- a. your or an End User's use of or registration for the Service Offerings (A) poses a security risk to the Service Offerings or any third party, (B) may adversely impact the Service Offerings or the systems or Content of any other customer, (C) may subject us, our affiliates, or any third party to liability, or (D) may be fraudulent;
- b. you are, or any End User is, in material breach of this Agreement, including if you are delinquent on your payment obligations for more than 30 days; or
- c. you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

6.2 Effect of Suspension. If we suspend your right to access or use any portion or all of the Service Offerings:

- a. you remain responsible for all fees and charges you have incurred through the date of suspension;
- b. you remain responsible for any applicable fees and charges for any Service Offerings to which you continue to have access;
- c. you will not be entitled to any credits for any period of suspension; and
- d. we will not delete any of Your Content on EVIDENCE.com as a result of your suspension, except as specified as specified in Section 7.

Our right to suspend your or any End User's right to access or use the Service Offerings is in addition to our right to terminate this Agreement pursuant to Section 7.2.

7 Term; Termination.

7.1 Term.

- a. **Subscription Term.**
 - i. Use of Service Offerings with AXON Flex Hardware. The initial Subscription Term of this Agreement will be determined based upon your receipt of the hardware, as authorized by you via a signed Quote or executed Purchase Order, which excludes any shipments of hardware related to a test and evaluation order. For customers who will use hardware with the Service Offerings, if the hardware is received in the first half of a month, then the Subscription Term starts on the 1st of the following month. If the hardware is received in the last half of a month, then the Subscription Term begins on the 15th of the following month.
 - ii. Use of Service Offerings on a Stand-Alone Basis. The initial Subscription Term of this Agreement for customers that will use the Service Offerings on a stand-alone basis, without a hardware purchase, will begin on the first of the month following the Effective Date of the Agreement.
 - iii. Length of Term. The Subscription Term of the Agreement will remain in effect for the Subscription Term agreed to in the Quote or purchase agreement, unless terminated by you or us in accordance with Section 7.2.
- b. **Trial Term.** If you signed up for a free test and evaluation of the Service Offerings, you are granted a limited non-exclusive license to use the Service Offerings for the term of the trial period. Upon the expiration of the Trial Term you must purchase a subscription for the Service Offerings

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to continue to use the Service Offerings to access Your Content. In the event you obtain a subscription for the Service Offerings after your Trial Term, then you will have the option to continue using Your Content stored on the Service Offerings for the Term of your subscription in accordance with Section 7.1(a) above.

7.2 Termination.

- a. **Renewal at End of Term.** This Agreement automatically renews for additional successive Terms of one (1) year each ("Renewal Term") at the list prices then in effect, unless you give us written notice of cancellation sixty (60) days prior to the end of a Term or as otherwise terminated under this Section 7.2. Automatic renewal of this Agreement will not have the effect of extending any subscription services beyond the Terms set forth in existing agreed-to Quotes or purchase agreements.
- b. **Termination for Convenience.** We may terminate this Agreement for any reason by providing you 30 days advance notice. In the event that we terminate this Agreement under this Section 7.2(b), we will issue you a refund of any prepaid amounts on a prorated basis.
- c. **Termination for Cause.**
 - i. **By Either Party.** Either party may terminate this Agreement 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.
 - ii. **By Us.** We may also terminate this Agreement immediately upon notice to you (1) for cause, if any act or omission by you or any End User in material breach of this Agreement results in a suspension described in Section 6, (2) if our relationship with a third party partner who provides storage, software or other technology we use to provide the Service Offerings expires, terminates or requires us to change the way we provide the storage, software or other technology as part of the Services, (3) if we believe providing the Services could create a substantial economic or technical burden or material security risk for us, (4) in order to comply with the law or requests of governmental entities, or (5) if we determine use of the Service Offerings by you or any End Users or our provision of any of the Services to you or any End Users has become impractical or unfeasible for any legal or regulatory reason.
- d. **Termination for Non-Appropriation by You.** Upon non-appropriation of funds from your governmental authority, you may terminate this Agreement by providing us written notice. "Non-appropriation of funds" means the Daytona Beach City Commission's adoption of a final budget for a fiscal year that does not include funding sufficient to pay annual maintenance payments that may come due during the fiscal year for which such budget is established. Termination will be effective upon the end of the fiscal year in which notice is given or at the end of the next annual anniversary of the Services, whichever is longer. Wherever practical, you will provide us notice of termination for non-appropriation of funds before the commencement of the fiscal year in which such budget is given. If this Agreement is terminated due to non-appropriation of funds and termination is effective after you have paid an annual maintenance fee, you will not be entitled to any refund of the prepaid fee. If this Agreement is terminated due to non-appropriation of funds and termination is effective after an annual maintenance fee has become due but before you have made the payment, you will pay a pro rata portion of the annual maintenance fee due based on the effective date of termination.

7.3 Effect of Termination. Upon any termination of this Agreement: (i) all your rights under this Agreement immediately terminate; (ii) you remain responsible for all fees and charges you have incurred through the date of termination, except as otherwise provided in this Agreement; and (iii) Sections 4.1, 5, 7.3, 9 (except the license granted to you in Section 9), 10, 11.2, 12, 13 and 14 will continue to apply in accordance with their terms.

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7.4 Return of Your Content after either a Trial Term or Subscription Term.

- a. **Notice Required.**
 - i. For terminations at the end of a Trial Term, Subscription Term or pursuant to Sections 7.2(c)(i) and 7.2(d), you must provide 30 days prior written notice to us that you want Your Content to be available for the applicable download time period set forth in Section 7.4(b).
 - ii. For terminations by us pursuant to Section 7.2(b) or (c)(ii), within 30 days after the termination date you must provide written notice to us that you desire Your Content be available for applicable download time period set forth in Section 7.4(b).
- b. **Availability of Your Content After Termination.** Upon proper written request made by you in accordance with Section 7.4(a) above:
 - i. we will not delete any of Your Content as a result of the termination during the 90 days following termination; and
 - ii. during the 90 days following termination you may retrieve Your Content from the Services only if you have paid all amounts due (there will be no application functionality of the Service Offerings during this 90 day period other than the ability for you to retrieve Your Content from the Services). You will not incur any additional fees if you download Your Content from the Services during the 90 day period.
 - iii. If you fail to provide us the required notice during the 30 day period, then we have no obligation to maintain or provide any of Your Content and will thereafter, unless legally prohibited, delete all of Your Content stored in the Service Offerings.
- c. **Post-Termination Assistance.** We will provide you with the same post-termination data retrieval assistance that we generally make available to all customers. Any additional post-termination assistance from us is subject to mutual agreement by you and us and may result in additional fees. For example, requests that TASER provide assistance to you in downloading or transferring of Your Content will result in additional fees from TASER and TASER will not warranty or guarantee data integrity or readability in the external system.

8 Third-Party Providers.

8.1 Third Party Content. Third Party Content, such as software applications provided by third parties, may be made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Because we may not have tested or screened the Third Party Content, your use of any Third Party Content is at your sole risk.

8.2 Acquisition of Third-Party Products and Services. We may offer Third-Party Applications for sale. 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. We do not warrant or support third-party products or services, whether or not they are designated by us as "certified" or otherwise, except as specified in a Purchase Order. No purchase of third-party products or services is required to use the Service Offerings.

8.3 Third-Party Applications and Your Content. If you install or enable Third-Party Applications for use with Services, you acknowledge that we may allow providers of those Third-Party Applications to access Your Content as required for the interoperation of the Third-Party Applications with the Services. We are not responsible for any disclosure, modification or deletion of Your Content resulting from any access by Third-Party Application providers.

9 Proprietary Rights.

9.1 Your Content. As between you and us, you control and own all right, title, and interest in and to Your Content. Except as provided in this Agreement, we obtain no rights from you to Your Content, including any related intellectual property rights. You consent to our use of Your Content to provide the Service Offerings to you and any of your End Users.

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9.2 Adequate Rights. You represent and warrant to us that: (a) you own all right, title, and interest in and to Your Content; (b) you have all rights in Your Content necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content or your End Users' use of Your Content or the Services Offerings will violate the Acceptable Use Policy as it is constituted on the Effective Date of this Agreement.

9.3 Service Offerings License. As between you and us, we or our affiliates or licensors own and reserve all right, title, and interest in and to the Service Offerings. Subject to the terms of this Agreement, we grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the Services solely in accordance with this Agreement during the Term of the Agreement. Except as provided in this Section 9, you obtain no rights under this Agreement from us or our licensors to the Service Offerings, including any related intellectual property rights.

9.4 License Restrictions. Neither you nor any of your End Users may use the Service Offerings in any manner or for any purpose other than as expressly permitted by this Agreement. Neither you nor any of your End Users may, or attempt to: (a) permit any third party to access the Service Offerings except as permitted in this Agreement; (b) modify, alter, tamper with, repair, or otherwise create derivative works of any of the Service Offerings; (c) reverse engineer, disassemble, or decompile the Service Offerings or apply any other process or procedure to derive the source code of any software included in the Service Offerings, or allow any others to do the same; (d) access or use the Service Offerings in a way intended to avoid incurring fees or exceeding usage limits or quotas; (e) copy the Service Offerings in whole or part, except as expressly permitted in this Agreement; (f) use trade secret information contained in the Service Offerings, except as expressly permitted in this Agreement; (g) resell, rent, loan or sublicense the Service Offerings; (h) access the Service Offerings in order to build a competitive product or service or copy any features, functions or graphics of the Service Offerings; or (i) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of ours or our licensors on or within the Service Offerings or any copies of the Service Offerings. All licenses granted to you in this Agreement are conditional on your continued compliance this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement. During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any Service Offerings you have used. You may only use our trademarks in accordance with the TASER Trademark Use Guidelines (located at www.taser.com).

9.5 Suggestions. If you or your End Users provide any suggestions to us, including suggestions for enhancements or improvements, we will own all right, title, and interest in and to the suggestions, even if you or your End Users have designated the suggestions as confidential. We will be entitled to use the suggestions without restriction. You irrevocably assign to us all right, title, and interest in and to the suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the suggestions.

9.6 Reservation of Rights. We own all right, title and interest in and to the Service Offerings, including without limitation all Intellectual Property Rights.

10 Indemnification.

10.1 Indemnification by You. You will defend, indemnify, and hold harmless us, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives 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 concerning: (a) your or any of your End Users' use

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of the Service Offerings (including any activities under your account and use by your employees and personnel); (b) breach of this Agreement or violation of applicable law by you or any of your End Users; (c) Your Content or the combination of Your Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third-party rights by Your Content or by the use of Your Content; (d) a dispute between you and any of your End Users; or (e) a dispute between you and any third-party over your collection or use of Your Content. If we or our affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our then-current hourly rates. We will promptly notify you of any claim subject to this Section 10.1, but our failure to promptly notify you will only affect your obligations under Section 10.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your own choosing (subject to our written consent) to defend against any claim; and (b) settle the claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time. We acknowledge that your obligation to indemnify under this Agreement is limited by the limitations, including the monetary limitations, set forth in Florida Statutes § 768.28; and that this Agreement will not be deemed to waive your sovereign immunity.

10.2 Indemnification by TASER. TASER will defend, indemnify, and hold you harmless, and each of your respective employees, officers, directors, and representatives 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 the use of the Service Offerings as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. You must provide TASER with prompt written notice of each such claim, tender to TASER the defense or settlement of each such claim at TASER's expense, and cooperate fully with TASER in the defense or settlement of each such claim. If TASER receives notice of an alleged infringement, or if your use of the Service Offerings will be prevented by permanent injunction, TASER may, at its sole option and expense, procure for you the right to continue using the Service Offerings as provided in this Agreement, modify the Service Offerings so that it no longer infringes, replace the TASER Service Offerings with other services of equal or superior functional capability, refund to you all amounts paid by you to TASER under this Agreement for the Service Offerings in the 1-year period immediately preceding the first event giving rise to the claim of infringement, or in the case of trademark infringement, instruct you to use an alternative trademark. TASER has no liability to you or any third party if any alleged infringement or claim of infringement is to any extent based upon: (a) any modification of the TASER Service Offerings by you or any third party; (b) use of the TASER Service Offerings in connection or in combination with equipment, devices, or services not provided by TASER; (c) the use of TASER Service Offerings 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 TASER as part of or in connection with the Service Offerings.

10.3 Exclusive Remedy. This Section 10 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.

11 Warranties and Disclaimers.

11.1 Warranty. Subject to Section 12, TASER represents and warrants to you that the Services will perform materially in accordance with the Documentation and will be performed in a timely and professional manner by qualified persons with the technical skills, training and experience to perform the Services.

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11.2 Disclaimers. THE SERVICE OFFERINGS ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD PARTY CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THE THIRD PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED, OR THAT THE SERVICE OFFERINGS WILL MEET YOUR REQUIREMENTS. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE SERVICES OFFERINGS IS IN ACCORDANCE WITH APPLICABLE LAW. YOU ARE SOLELY RESPONSIBLE FOR: (A) ALL DATA BEFORE IT IS UPLOADED TO THE SERVICE OFFERINGS; (B) CONFIGURING AND SETTING UP ANY HARDWARE OR NETWORKS THAT YOU CONNECT TO THE SERVICE OFFERINGS; (C) YOUR NETWORKS AND HOW THEY MAY INTERACT WITH THE HARDWARE, SOFTWARE OR SERVICE OFFERINGS; AND (D) ANY SECURITY SETTINGS YOU ESTABLISH TO INTERACT WITH OR ON THE SERVICE OFFERINGS. TASER DISCLAIMS ANY WARRANTIES OR RESPONSIBILITY FOR DATA CORRUPTION OR ERRORS BEFORE THE DATA IS UPLOADED TO THE SERVICE OFFERINGS. All warranties or guarantees given or made by us with respect to the Service Offerings are solely for the benefit of you and your End Users and are not transferable and are null and void if you breach any term or condition of this Agreement.

12 Limitations of Liability.

NEITHER PARTY, INCLUDING WITH RESPECT TO TASER, OUR AFFILIATES OR LICENSORS, WILL BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS, (ii) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICE OFFERINGS, OR, (iii) WITHOUT LIMITING ANY OTHER OBLIGATIONS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICE OFFERINGS; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. IN ANY CASE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, OUR AND OUR AFFILIATES' AND LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATER OF \$100,000 OR THE AMOUNT YOU ACTUALLY PAY US UNDER THIS AGREEMENT FOR THE SERVICE OFFERINGS THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM. NOTHING IN THIS SECTION 12 LIMITS YOUR OBLIGATIONS UNDER SECTION 5.

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13 Miscellaneous.

13.1 Confidentiality. You may use our Confidential information only in connection with your use of the Service Offerings as permitted under this Agreement. You will not disclose our Confidential Information during the Term or at any time during the 5 year period following the end of the Term. You will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of our Confidential Information, including, at a minimum, those measures you take to protect your own confidential information of a similar nature.

13.2 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 our 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.

13.3 Independent Contractors; Non-Exclusive Rights. The parties are independent contractors, and neither party, nor any of their respective affiliates, is an agent of the other for any purpose or 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.

13.4 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.

13.5 U.S. Government Rights. The Service Offerings are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Service Offerings. If you are using the Service Offerings 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, you will immediately discontinue your use of the Service Offerings. 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.

13.6 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, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the U.S. Office of Foreign Assets Control. You are solely responsible for compliance related to the manner in which you choose to use the Service Offerings, including your transfer and processing of Your Content, the provision of Your Content to End Users, and the region in which any of the foregoing occur.

13.7 Notice.

- a. **To You.** We may provide any notice to you under this Agreement by: (i) posting a notice on the EVIDENCE.com site; or (ii) sending a message to the email address then associated with your account. Notices we provide by posting on the EVIDENCE.com site will be effective upon posting and notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.
- b. **To Us.** To give TASER notice under this Agreement, you must contact us: (i) by email transmission to evidencecontracts@taser.com; or (ii) by personal delivery, overnight courier or registered or certified mail to TASER International, Inc., ATTN: Evidence Contracts, 17800 N. 85th Street, Scottsdale, Arizona 85255. We may update the email or address for notices to us by

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posting a notice on the EVIDENCE.com site. Notices provided by personal delivery will be effective immediately. Notices provided by email transmission or overnight courier will be effective one business day after they are sent. Notices provided registered or certified mail will be effective three business days after they are sent.

- c. **Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

13.8 Assignment. Neither party may assign or otherwise transfer this Agreement or any of its rights and obligations under this Agreement without the prior written approval of the other party; except that TASER may assign or otherwise transfer this Agreement or any of TASER's rights or obligations under this Agreement without the consent of you (a) in connection with a merger, acquisition or sale of all or substantially all of TASER's assets, or (b) to as part of a corporate reorganization. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

13.9 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. All waivers by a party must be in writing and sent in accordance with Section 13.7 to be effective.

13.10 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. Any invalid or unenforceable portions will be interpreted to effect and intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from this Agreement but the rest of the Agreement will remain in full force and effect.

13.11 Governing Law; Venue. The laws of the State of Florida, without reference to conflict of law rules, govern this Agreement and any dispute of any sort that might arise between the parties. Any dispute relating in any way to the Service Offerings or this Agreement must only be adjudicated in the Middle District Court of Orlando, if in federal court, or in Volusia County, Florida, if in state court. Each party consents to exclusive jurisdiction and venue in these courts. Notwithstanding the foregoing, either party may seek injunctive relief in any state, federal, or national court of competent jurisdiction for any actual or alleged infringement of that party's or any third party's intellectual property or other proprietary rights. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

13.12 Litigation Costs. In the event of any legal action to enforce the provisions of this Agreement, each party will be responsible for its own attorneys' fees and costs.

13.13 Entire Agreement; English Language. This Agreement, including the Policies and the quote provided by TASER, is the entire agreement between you and TASER regarding the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous representations, understandings, agreements, or communications between you and TASER, whether written or verbal, regarding the subject matter of 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 Service Offerings. Notwithstanding any other agreement between you and TASER, the security and data privacy provisions in Section 3 of this Agreement contain our and our affiliates' entire obligation regarding the security, privacy and confidentiality of Your Content. TASER will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by you in any order, receipt, acceptance, confirmation, correspondence or other document. If the terms of this document are

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inconsistent with the terms contained in any Policy, the terms contained in this document will control. 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 we provide a translation of the English language version of this Agreement, the English language version of the Agreement will control if there is any conflict.

13.14 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.

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

14 Definitions.

“Acceptable Use Policy” means the policy currently available at www.taser.com and www.evidence.com as it may be updated by us from time to time.

“API” means an application program interface.

“Confidential Information” means all nonpublic information disclosed by TASER, our affiliates, business partners or our or their respective employees, contractors or agents that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential. Confidential Information includes: (a) nonpublic information relating to our or our affiliates or business partners’ technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that we are obligated to keep confidential; and (c) the nature, content and existence of any discussions or negotiations between you and us or our affiliates. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement, such as where disclosure is required by law; (ii) can be shown by documentation to have been known to you at the time of your receipt from us; (iii) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by you without reference to the Confidential Information.

“Content” means software, data, text, audio, video, images or other content.

“Documentation” means the user guides, quick reference guides, and other technical and operations manuals and specifications for the Services provided by us, as such documentation may be updated by us from time to time.

“End User” means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Service Offerings under your account. The term “End User” does not include individuals or entities when they are accessing or using the Services or any Content under their own account, rather than your account.

“EVIDENCE.com site” means www.evidence.com and any successor or related site designated by TASER.

“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 our confidential information, and any other intellectual property rights throughout the world, whether registered or unregistered and including applications for any such rights.

“Policies” means the Acceptable Use Policy, any Service Level Agreement, the Trademark Use

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Guidelines, all restrictions described on the EVIDENCE.com site, and any other policy or terms referenced in or incorporated into this Agreement. Policies do not include whitepapers or other marketing materials.

“Privacy Policy” means the privacy policy currently referenced at <http://www.taser.com/privacy-policy>, as it may be updated by us from time to time.

“Service” means each of the web services made available by TASER.

“Service Offerings” means the Services, the EVIDENCE.com site, EVIDENCE Sync software, other software, maintenance, storage, and any other product or service provided by us under this Agreement. This does not include any Third Party Applications.

“Your Content” means Content you or any of your End Users (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account.

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| <p>TASER International, Inc.</p> <p>By: <u>[Signature]</u> Name: <u>Jeff Kukorski</u> Title: <u>EVP Sales & CMO</u> Signature Date: <u>6/12/13</u></p> <p>Address: 17800 N. 85th Street Scottsdale, AZ 85255 ATTN: General Counsel Fax: 480.905.2027 Email: legal@taser.com</p> | <p>Agency Name: City of Daytona Beach, FL</p> <p>By: <u>[Signature]</u> Derrick L. Henry, Mayor</p> <p>Attest: <u>[Signature]</u> Jennifer L. Thomas, City Clerk</p> <p>Date: <u>June 19, 2013</u></p> <p>Approved as to legal form: By: <u>[Signature]</u> Marie Hartmen, City Attorney</p> <p>Address: _____ _____ _____</p> |
|---|---|

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**TASER International, Inc.'s Sales Terms and Conditions
for Direct Sales to End User Purchasers**

City of Daytona Beach, Florida

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 product.

AFID Registration. For the TASER CEWs 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 Citizen Model CEWs, Cartridges and Accessories: The citizen model CEWs, 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. 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.

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, 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

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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 of some 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) or contact TASER's Customer Service Department for a list of known regulations and restrictions regarding the sale, possession, and use of TASER CEW 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) 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 exclusive and in lieu of all other warranties, 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 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; provided that your disclosure of information required to be disclosed by law will not breach this obligation.

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, along with the product warranty, license agreements and EVIDENCE.com Master Service Agreement, constitute the entire agreement between the parties. These Sales Terms and Conditions supersede and

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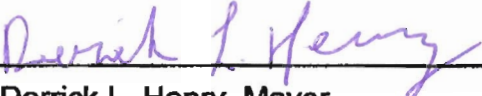
replace any prior agreement or understanding between the parties, including any oral representations concerning the subject matter of this agreement. Any prior or extrinsic representations or agreements, with the exception of the product warranty, EVIDENCE.com Master Service Agreement and license agreement(s), are intended to be discharged or nullified.

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

VENDOR: TASER International, Inc.

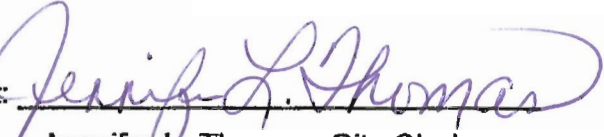
CLIENT: City of Daytona Beach

By: 

By: 
Derrick L. Henry, Mayor

Printed Name: JEFF KULKOWSKI

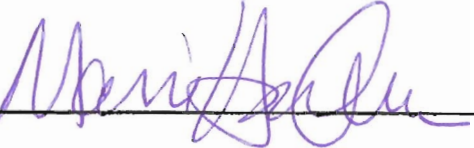
Title: CMO


Attest: 
Jennifer L. Thomas, City Clerk

Date: JUNE 3, 2013

Date: June 19, 2013

Approved as to legal form:

By: 
Marie Hartman, City Attorney

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