

**RESOLUTION
R 34-20**

**A RESOLUTION AUTHORIZING SIGNATURE OF
THE VILLAGE PRESIDENT ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard and the Axon Enterprise, Inc. as attached as Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 15th day of October, 2020.

Ayes: Trustee Whittington, Puccio, Foltyniewicz, Honig and Militello

Nays: None

Absent: Trustee Ware

Approved by me this 15th day of October, 2020.



**Keith T. Giagnolio
Village President**

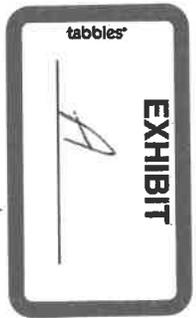
ATTEST:



**Sharon Kuderna
Village Clerk**



Axon Enterprise, Inc.'s TASER 7 Agreement



This TASER 7 Agreement ("**Agreement**") applies to Agency's TASER 7 purchase from Axon Enterprise, Inc. ("**Axon**"). Agency will receive TASER 7 Conducted Energy Weapon ("**CEW**") hardware, accessories, warranty, and services documented in the attached Quote Appendix ("**Quote**").

1. **Term.** The start date is based on initial shipment of TASER 7 hardware ("**Start Date**"). If shipped in the first half of the month, the Start Date is the 1st of the following month. If shipped in the last half of the month, the Start Date is the 15th of the following month. The TASER 7 term will end upon completion of the associated TASER 7 subscription in the Quote ("**Term**"). If the Quote has multiple TASER 7 ship dates, each shipment will have its own 60-month term, starting on the shipment of TASER 7 as described above.
2. **Unlimited Duty Cartridge Plan.** If the Quote includes "**Unlimited Duty Cartridge Plan**", this section applies. Agency must purchase an Unlimited Duty Cartridge Plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty, and ones that only use a CEW for training. Agency may not resell cartridges received under any TASER 7 plan. Axon will only replace cartridges used in the line of duty.
3. **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. During the Term, Axon will issue Agency a voucher annually beginning on the Start Date. The voucher has no cash value. Agency cannot exchange it for another product or service. If the Quote includes Axon Online Training or Virtual Reality Content (collectively, "**Training Content**"), Agency may access Training Content during the Term. Axon will deliver all Training Content electronically. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility.
4. **Payment.** Unless specified in the Quote, Axon will invoice Agency on the Start Date and then on the Start Date anniversary during the Term, if annual payments are elected. Payment is due net 30 days from the invoice. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. Unless Agency provides Axon a valid and correct tax exemption certificate applicable to the purchase and ship-to location, Agency is responsible for all taxes associated with the order.
5. **Shipping.** Axon may make partial shipments and ship from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon delivery to common carrier by Axon. If Agency requests expedited shipping, Agency is responsible for expedited shipping charges. Any loss or damage during shipment is Agency's responsibility. Shipping dates are estimates only. If the Quote includes future deliveries of hardware, Axon will ship hardware to Agency's address on the Quote.
6. **Returns.** All sales are final and no refunds or exchanges are allowed, except for warranty returns or as provided by state or federal law.
7. **Hardware Limited Warranty.** Axon's manufacturer warranty warrants that its law enforcement hardware is free from defects in workmanship and materials for 1 year from the date of receipt. Axon warrants its accessories for 90-days from date of receipt. Expended CEW cartridges are deemed to have operated properly. Extended warranties run from expiration of



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the 1-year manufacturer warranty through the term of the extended warranty. Non-Axon manufactured products are not covered by Axon's warranty.

If Axon receives a valid warranty claim during the warranty period, Axon's sole responsibility is to repair or replace the product with the same or like product, at Axon's option. A replacement product will be new or like new and have the remaining warranty period of the original product or 90 days from the date of replacement or repair, whichever is longer. A replacement item becomes Agency's property and the replaced item becomes Axon's property. For support and warranty service, visit www.axon.com/support. Before delivering product for service, Agency must upload product data to Axon Evidence (Evidence.com) or download it and retain a copy. Axon is not responsible for loss of data or other information contained on the storage media or any part of the product.

8. **Extended Warranty.** If the Quote includes a TASER 7 plan (**TASER 7 Basic - Upfront Plus Subscription, TASER 7 Basic - Subscription, or TASER 7 Certification**), extended warranty coverage is included for the TASER CEW, dock and core, and rechargeable battery as described in the Hardware Limited Warranty. TASER 7 plans extended warranty coverage begins on the Start Date and continues for the Term. If the Quote does not include a TASER 7 plan, Agency may purchase extended warranties to provide coverage.
9. **Warranty Limitations.** Axon's warranty obligations exclude damage related to: (a) failure to follow instructions on product's use; (b) products used with products not manufactured or recommended by Axon; (c) abuse, misuse, intentional, or deliberate damage to the product; (d) force majeure; (e) products repaired or modified by persons other than Axon without the written permission of Axon; or (f) products with a defaced or removed serial number.

To the extent permitted by law, the warranties and remedies set forth above are exclusive and Axon disclaims all other warranties, remedies, and conditions, whether oral or written, statutory, or implied, as permitted by applicable law. If statutory or implied warranties cannot be lawfully disclaimed, then all such warranties are limited to the duration of the express warranty described above and limited by the other provisions contained in this Agreement. Axon's cumulative liability to any party for any loss or damage resulting from any claims, demands, or actions arising out of or relating to any Axon product will not exceed the purchase price paid to Axon for the product or if for services, the amount paid for such services over the prior 12 months preceding the claim. In no event will either party be liable for any direct, special, indirect, incidental, exemplary, punitive or consequential damages, however caused, whether for breach of warranty, breach of contract, negligence, strict liability, tort or under any other legal theory.

10. **Spare Products.** Axon may provide Agency a fixed number of spares for TASER 7 hardware in the Quote ("**Spare Products**"). Spare Products will replace non-functioning units. If Agency uses a Spare Product, Agency must return non-functioning units to Axon, and Axon will repair or replace the non-functioning unit. If Agency does not return Spare Products to Axon within 30 days of termination of this Agreement, Axon will invoice Agency the MSRP then in effect for all unreturned Spare Products.



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11. Trade-In. If a trade-in discount is on the Quote, Agency must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in discount. Agency may not destroy Trade-In Units and receive a trade-in discount.

Agency Size	Days to Return from Start Date
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

12. Product Warnings. See www.axon.com/legal for the most current Axon product warnings.

13. Design Changes. Axon may make changes in the design of any of Axon's products and services without notifying Agency or making the same change to products and services previously purchased. Axon may replace end of life products with the next generation of that product without notifying Agency.

14. Termination. If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:

14.1. TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.

14.2. Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.

14.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.

15. Delays. Axon will use reasonable efforts to deliver products and services as soon as practicable. If delivery is interrupted due to causes beyond Axon's control, Axon may delay or terminate delivery with notice.

16. Proprietary Information. Agency agrees Axon has and claims various proprietary rights in the hardware, firmware, software, and the integration of ancillary materials, knowledge, and designs that constitute Axon products and services. Agency will not directly or indirectly cause any proprietary rights to be violated.

17. Export Compliance. Each party will comply with all import and export control laws and regulations.

18. Assignment. Agency may not assign or transfer this Agreement without Axon's prior written approval.



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- 19. **Governing Law: Venue.** The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute that might arise between the parties. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 20. **Entire Agreement.** This Agreement, including the Appendices, represent the entire agreement between the parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the parties. If any portion of this Agreement is held invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc. Agency

Signature: [Handwritten Signature]
 Name: KEITH GIRONDAIO
 Title: VILLAGE PRESIDENT
 Date: OCTOBER 15, 2020

Axon Enterprise, Inc.

DocuSigned by:
 Signature: [Handwritten Signature]
 Name: Robert Driscoll
 Title: VP, Assoc. General Counsel
 Date: 10/16/2020 | 2:25 PM MST

TASER 7 Evidence.com Terms of Use Appendix

- 1 **Subscription Term.** The TASER 7 Evidence.com Subscription Term begins on the Start Date.
- 2 **Agency Content.** "Agency Content" means software, data, text, audio, video, images or other content any of Agency's end users (a) run on Evidence.com; (b) cause to interface with Evidence.com; or (c) upload to Evidence.com under Agency account or otherwise transfer, process, use or store in connection with Agency account.
- 3 **Access Rights.** Upon Axon granting Agency a TASER 7 Evidence.com subscription, Agency may access and use Evidence.com for the storage and management of data from TASER 7 CEW devices during the TASER 7 Evidence.com Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Evidence.com. Agency may not exceed the number of end users than the Quote specifies.
- 4 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in and to Agency Content and except as otherwise outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for the uploading, sharing, withdrawal, management and deletion of Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Evidence.com to Agency and Agency end users.
- 5 **Security.** Axon will implement commercially reasonable and appropriate measures to secure



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Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 6 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency users comply with this Agreement; (b) ensuring Agency owns Agency Content and no Agency Content or Agency end user's use of Agency Content or Evidence.com violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Evidence.com. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Evidence.com.

Agency is also responsible for maintaining the security of end user names and passwords and taking steps to maintain appropriate security and access by end users to Agency Content. Login credentials are for Agency internal use only and Agency may not sell, transfer, or sublicense them to any other entity or person. Audit log tracking for video data is an automatic feature of Evidence.com that details who accesses Agency Content. Agency may download the audit log at any time. Agency shall contact Axon immediately if an unauthorized third party may be using Agency's account or Agency Content or if account information is lost or stolen.

- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content so Agency may file an objection with the court or administrative body. Agency acknowledges and agrees that Axon may access Agency Content in order to: (a) perform troubleshooting services upon request or as part of Axon's maintenance or diagnostic screenings; (b) enforce this Agreement or policies governing use of Axon Evidence Services; (c) generate aggregated data, excluding information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (collectively, "PII"), to improve, analyze, support, and operate Axon's current and future products and services.

- 8 **Storage.** Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.

- 9 **Location of Data Storage.** Axon may transfer Agency Content to third party subcontractors for storage. Axon will determine the locations of data centers where Agency Content will be stored. For United States agencies, Axon will ensure all Agency Content stored in Evidence.com remains within the United States. Ownership of Agency Content remains with Agency.

- 10 **Suspension.** Axon may suspend Agency access or any end user's right to access or use any portion or of Evidence.com immediately upon notice, if:

10.1. The Termination provisions of the TASER 7 Terms and Conditions apply;

10.2. Agency or an end user's use of or registration for Evidence.com (i) poses a security risk



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to Evidence.com or any third party, (ii) may adversely impact Evidence.com or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent;

Agency remains responsible for all fees and charges incurred through the date of suspension without any credits for any period of suspension. Axon will not delete any of Agency Content on Evidence.com due to suspension, except as specified elsewhere in this Agreement.

- 11 **Evidence.com Warranty.** Axon warrants that Evidence.com will not infringe or misappropriate any patent, copyright, trademark, or trade secret rights of any third party. Axon disclaims any warranties or responsibility for data corruption or errors before the data is uploaded to Evidence.com.
- 12 **Evidence.com Restrictions.** All Evidence.com subscriptions will immediately terminate if Agency does not comply with any term of this Agreement. Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 12.1. copy, modify, tamper with, repair, or create derivative works of any part of Evidence.com;
 - 12.2. reverse engineer, disassemble, or decompile Evidence.com or apply any other process to derive any source code included in Evidence.com, or allow any others to do the same;
 - 12.3. access or use Evidence.com with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 12.4. use trade secret information contained in Evidence.com, except as expressly permitted in this Agreement;
 - 12.5. access Evidence.com to build a competitive product or service or copy any features, functions, or graphics of Evidence.com;
 - 12.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Evidence.com ; or
 - 12.7. use Evidence.com to store or transmit infringing, libelous, or otherwise unlawful or tortious material, to store or transmit material in violation of third party privacy rights, or to store or transmit malicious code.
- 13 **After Termination.** Axon will not delete Agency Content for 90 days following termination. During this 90-day period, Agency may retrieve Agency Content only if all amounts due have been paid. There will be no application functionality of Evidence.com during this 90-day period other than the ability to retrieve Agency Content. Agency will not incur any additional fees if Agency Content is downloaded from Evidence.com during this 90-day period. Axon has no obligation to maintain or provide any Agency Content after this 90-day period and will thereafter, unless legally prohibited delete all of Agency Content stored in Evidence.com. Upon request, Axon will provide written proof that all Agency Content has been successfully deleted and fully removed from Evidence.com.
- 14 **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data



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retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's Data Egress Services, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

- 15 U.S. Government Rights.** If Agency is a U.S. Federal department or using Evidence.com on behalf of U.S. Federal department, Evidence.com is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Evidence.com 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, Agency will immediately discontinue use of Evidence.com.
- 16 Survival.** Upon any termination of this Agreement, the following sections will survive: Agency Owns Agency Content, Storage, Evidence.com Warranty, and Evidence.com Restrictions.

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