

MILWAUKEE COUNTY TERMS AND CONDITIONS HOC ADDENDUM

The Milwaukee County Terms and Conditions Addendum ("HOC Addendum"), is entered into between Axon Enterprise, Inc. ("Axon") and Milwaukee County, a Wisconsin municipal body corporate, by the Milwaukee County House of Correction, ("County" or "DIR Customer")(collectively, the "Parties," or individually, a "Party") and is effective as of June 30, 2020 ("HOC Addendum Effective Date").

Axon acknowledges, accepts and agrees that the HOC Addendum shall take precedence over the Master Service and Purchasing Agreement entered between the Parties on the same date herewith ("Agreement"). The HOC Addendum shall take precedence over the terms of any Statement of Work ("SOW"), amendment, purchase order, change orders or any other documents entered between the Parties which is incorporated by reference into the Agreement. In the event of a conflict between the terms of the HOC Addendum and the Agreement or any documents incorporated by reference therein, the terms of the HOC Addendum shall prevail.

The Parties agree as follows:

1. Agreement Documents, Contract Portfolio and Order of Precedence.

1.1 The Department of Information Resources ("DIR") is a Texas state agency which serves as a governmental cooperative purchasing and contracting agency for governmental entities which issued a Request for Offer ("RFO")(#DIR-TSO-TMP-226) on May 26, 2015, for Law Enforcement IT Hardware, Software and Services. On November 17, 2016, DIR entered into a Contract for Products and Related Services, DIR Contract No. DIR-TSO-3561 ("DIR Contract") with Taser International, Inc., n/k/a Axon Enterprise, Inc. ("Axon"). The County entered an Interstate Cooperation Contract ("DIR Contract") with the DIR State of Texas, through the on November 27, 2019, to permit the County to purchase services from the Axon under the DIR Contract.

1.2 The contract portfolio consists of the following documents, listed in order of preference to be followed in resolving any inconsistencies between the contracts or any other documents which are incorporated into the contracts/agreements by reference:

- 1.2.1 Milwaukee County Remote Network Access Directive for Vendors (Exhibit A) (previously executed by the Parties);
- 1.2.2 Milwaukee County Acceptable Use of Technology Directive for Vendors (Exhibit B) (previously executed by the Parties);
- 1.2.3 Milwaukee County Terms and Conditions HOC Addendum ("HOC Addendum");
- 1.2.4 Interstate Cooperation Contract for Texas Department of Information Resources Technology Contract, ("Interstate Cooperation Contract") (Exhibit C);
- 1.2.5 Axon Master Service and Purchasing Agreement ("Axon Agreement") (Exhibit D);
- 1.2.6 Axon Enterprise, Inc's TASER 7 Agreement (Exhibit E);
- 1.2.7 Axon TASER 7 Certification Plan (Exhibit F); and,
- 1.2.8 Axon 04.22.20 Quote, Q-252152-43943.646JB ("2020 Quote") (Exhibit G).

1.3 **Order of Precedence.** The Agreement portfolio consists of the following documents, listed in Order of Precedence to be followed in resolving any inconsistencies between the terms of the HOC Addendum, Axon Agreement and the terms of any SOW, amendment or other documents incorporated into the HOC Addendum and/or Agreement by reference:

- 1.3.1 Milwaukee County Remote Network Access Directive for Vendors (Exhibit A);
- 1.3.2 Milwaukee County Acceptable Use of Technology Directive for Vendors (Exhibit B);
- 1.3.3 Milwaukee County Terms and Conditions HOC Addendum (“HOC Addendum”);
- 1.3.4 Interstate Cooperation Contract for Texas Department of Information Resources Technology Contract, (“Interstate Cooperation Contract”) (Exhibit C);
- 1.3.5 Axon Master Service and Purchasing Agreement (“Axon Agreement”) (Exhibit D);
- 1.3.6 Axon Enterprise, Inc’s TASER 7 Agreement (Exhibit E);
- 1.3.7 Axon TASER 7 Certification Plan (Exhibit F); and,
- 1.3.8 Axon 04.22.20 Quote, Q-252152-43943.646JB (“2020 Quote”) (Exhibit G).

2. Term of HOC Addendum. The Parties agree that Section 1, Term of the Axon Agreement are appended to include the following sections:

2.1 **Term.** Unless terminated earlier by agreement of the Parties or in accordance with this HOC Addendum, the term of this HOC Addendum shall commence on the HOC Addendum Effective Date and terminate Fifty-two (52) months later (“Initial Term”), unless terminated in accordance with the Axon Agreement and/or HOC Addendum. County shall have four (4) options to renew for an additional twelve (12) month term (“Renewal Term”). Such option(s) shall run consecutive to the Initial Term; and, the intent to renew shall be exercised by written notice to Axon at least thirty (30) days prior to the then current Term expiration date. Any Renewal Term shall be contingent upon the appropriation of the necessary funds by the County; and, may only be exercised by the written agreement of the Parties.

2.1.1 The Initial Term and any Renewal Terms of this Agreement referenced above are jointly referred to herein as the “Term” of the HOC Addendum.

2.2 **County’s Right of Termination.** If Axon fails to fulfill its obligations under the Agreement in a timely or proper manner, or violates any of its provisions, or for any reason, Agency shall have the right to terminate the Agreement by giving thirty (30) days’ written notice of termination, specifying the alleged violations and effective date of termination. It shall not be terminated if, upon receipt of the notice of termination, Axon promptly cures the alleged violation prior to the end of the thirty (30) day period. This period to cure, however, will not be required to delay termination of the Agreement where the breach involved is one which Axon cannot cure within the prescribed cure period or is one which is impossible to cure. In the event of termination, County will only be liable for services rendered through the date of termination.

2.3. **Termination Due to Insolvency.** County may terminate the Agreement, immediately upon: (a) termination or suspension of Axon’s business; (b) insolvency or filing of a voluntary or involuntary petition in bankruptcy, which petition is not dismissed within thirty (30) calendar days of filing; (c) appointment of a receiver, assignee or other liquidating officer for all or substantially all of the Axon’s assets; or, (d) an assignment for benefit of creditors.

2.4 **Termination for Insufficient Funds.** The Agreement shall terminate at such time that the County fails to appropriate sufficient sums in the budget year for which the Agreement applies to pay the amount due. County will immediately notify Axon when it

becomes aware that funding may not be appropriated. County will use its best efforts to provide Axon with at least thirty (30) days written notice prior to terminating the Agreement for lack of sufficient funds. The County's decisions to whether sufficient appropriations and authorizations are available shall be accepted by Axon as final. In such an event, Axon shall immediately reduce and/or discontinue its activities hereunder as requested by County. The Parties agree that Axon will not charge County with any termination fee or penalty for such early termination. The Parties recognize that the continuation of any Agreement is subject to appropriations and budget approval providing such Agreement item as an expenditure in that budget.

3. Effect of Termination

3.1 **Migration.** Axon recognizes that the Services under the Agreement are vital to County operations and must be continued without interruption. If Axon terminates the Services, County shall have a reasonable period from the receipt of Axon's notice of termination to migrate from the Services to the software of another vendor, as further described in Section 13 of the Axon Evidence Terms of Use in the Axon Master Services and Purchasing Agreement. During this migration period County may continue to use the Services, so long as County pays for such Services, subject to the terms and conditions of this Agreement as necessary for migration.

3.2 **IN NO EVENT SHALL AXON REMOVE, ALTER, CHANGE OR INTERFERE WITH ANY SERVICE FOR PURPOSES OF PREVENTING COUNTY FROM USING SUCH SERVICE, AS THE RESULT OF ANY DISPUTE UNDER THIS AGREEMENT.**

3.3 Upon termination of this Agreement, for whatever reason, Axon shall stop the processing of Confidential Information or County Data unless instructed otherwise by County, in writing; and, these undertakings shall remain in full force and effect until such time as Axon no longer possesses Confidential Information or County's Data. Parties agree that Section 13 of the Axon Evidence Terms of Use in the Axon Master Services and Purchasing Agreement details the return of the Confidential Information or County's Data. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Confidential Information or County Data from Axon Cloud Services.

3.4 **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, County Data, payment, limitation of liability, indemnity and such other terms which by their nature survive termination, will survive termination of the Agreement.

4. Ownership of Data. All County Data processed and/or data created by use of the services is and remains the property of the County and shall in no way become attached to the services, nor shall Axon have any right in or to the County Data.

4.1 The Parties agree that at all times during the Term of this Agreement, the County shall have full access to and the ability to export any or all the County Data from Axon, its services at no cost to the County.

4.2 Upon termination or expiration of the Agreement, County may download its data as described in Section 13 of the Axon Cloud Service Terms of Use Appendix in the Axon Master Services and Purchasing Agreement, which shall be at no additional cost to County.

5. Choice of Law; Arbitration and Regulation.

5.1 **Governing Law.** The Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin, without application of any conflict laws provisions thereof. The United Nations Convention on the International Sales of Goods (CISG) shall not apply to the interpretation or enforcement of the Agreement. All legal actions hereunder shall be brought in the State of Wisconsin; and, the exclusive forum and venue for such disputes shall be Milwaukee County Circuit Court located in Milwaukee, Wisconsin. Each Party hereby waives any defenses it may have before such courts based on a lack of personal jurisdiction or inconvenient forum.

5.2 **Arbitration.** In the event that the Parties are unable to resolve differences that may arise relating to the Agreement, all disputes arising from the Agreement shall be resolved through the Milwaukee County Circuit Court, unless both Parties agree to binding arbitration, which shall take place in Milwaukee, Wisconsin. If arbitration is agreed to, the arbitration shall be governed by the most recently published Commercial Arbitration Rules of the American Arbitration Association. Both Parties agree to submit disputes to a single arbitrator acceptable to both Parties. The arbitrator will be selected from a list compiled by the Parties' respective legal counsel. Every person named on the list of potential arbitrators must be a neutral and impartial lawyer who has at least fifteen (15) years specializing in the field of general commercial litigation and is knowledgeable about software licensing contracts. The arbitrator shall base its award on applicable law and judicial precedent and unless both Parties agree, otherwise shall include in such awarded the finding of fact and conclusions of law upon which the award is based. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

5.3 **Severability.** If any provision of the Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provision of the Agreement will remain in full force and effect.

5.4 **Effect of Regulation.** Should any local, state or national regulatory authority having jurisdiction over the Agency enter a valid and enforceable order upon the Agency which has the effect of changing or superseding any term or condition of the Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, the Agreement shall remain in effect, unless the effect of the order is to deprive the Agency of a material part of its Agreement with Axon. In the event this order results in depriving the Agency of material parts or raising their costs beyond that defined in the Agreement, the Agency shall have the right to rescind all or part of the Agreement (if such a rescission is practical) or to end the Agreement term upon thirty (30) days written prior notice to Axon. Should the Agreement be terminated under such circumstances, such termination shall be considered a termination for convenience.

6. Security Policies and Safeguards.

6.1 Security Policies and Safeguards. Axon shall establish and maintain administrative, technical and physical safeguards designed to protect against the destruction, loss, unauthorized access or alteration of County Data and Confidential Information in the possession or under the control of Axon or to which Axon has access, which are: (i) no less rigorous than those maintained by Axon for its own information of a similar nature; (ii) no less rigorous than generally accepted industry standard; and, (iii) no less rigorous than as required by applicable laws. The security procedures and safeguards implemented and maintained by Axon shall include, without limitation:

- 6.1.1 User identification and access controls designed to limit access to Agency's Data to authorized users;
- 6.1.2 The use of appropriate procedures and technical controls governing data entering Axon's network from any external sources;
- 6.1.3 The use of strong encryption techniques when County Data is transmitted or transferred into or out of the Axon's Website environment;
- 6.1.4 Physical security measures, including without limitation securing County Data within a secure facility where only authorized personnel and agents will have physical access to County Data;
- 6.1.5 Periodic employee training regarding the security programs; and,
- 6.1.6 Periodic testing of the Axon's systems and procedures.

6.2 Security Incident Response. In the event that Axon becomes aware that the security of any County Data or Confidential Information has been compromised, or that such County Data or Confidential Information has been or is reasonably expected to be subject to a use or disclosure not authorized by this HOC Addendum (an "Information Security Incident"), Axon shall: (i) promptly (and in any event within forty-eight (48) hours of becoming aware of such Information Security Incident), notify County, in writing, of the occurrence of such Information Security Incident; (ii) investigate such Information Security Incident and conduct a reasonable analysis of the cause(s) of such Information Security Incident; (iii) provide periodic updates of any ongoing investigation to County; (iv) develop and implement an appropriate plan to remediate the cause of such Information Security Incident to the extent such cause is within Axon's control; and, (v) cooperate with the County's reasonable investigation or County's efforts to comply with any notification or other regulatory requirements applicable to such Information Security Incident.

6.3 Upon termination of this HOC Addendum, for whatever reason, Axon shall stop the processing of County Data, unless instructed otherwise by County, in writing; and, these undertakings shall remain in full force and effect until such time as Axon no longer possesses County's Data and Confidential Information, as further described Section 13 of the Axon Evidence Terms of Use in the Axon Master Services and Purchasing Agreement.

7. Insurance:

Every contractor and all parties furnishing services or product to County or any of its subsidiary companies must provide County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the Agreement. All Parties shall, at their sole expense, maintain the following insurance:

7.1 Commercial General Liability Insurance including contractual coverage: The limits of this insurance for bodily injury and property damage Combined shall be at least:

| | |
|---------------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Products – Completed Operations Limit | \$2,000,000 |
| Personal and Advertising injury Limit | \$1,000,000 |

7.2 Business Automobile Liability Insurance: Should the performance of this Agreement involve the use of automobiles, Axon shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Axon shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

7.3 Workers' Compensation Insurance: Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

7.4 Employers Liability Insurance:
Such insurance shall provide limits of not less than \$500,000 policy limit.

7.5 Cyber Liability Insurance:
The limits of this insurance shall be at least per occurrence:

| | |
|---------------------------------|-------------|
| Security Liability | \$5,000,000 |
| Privacy Liability | \$5,000,000 |
| Regulatory Proceedings | \$5,000,000 |
| Technology Errors and Omissions | \$5,000,000 |

7.6 Excess/Umbrella Liability Insurance:
Such insurance shall provide additional limits of not less than \$5,000,000 per occurrence in excess of the limits in (7.1), (7.2), and (7.4) above.

Additional Requirements:

7.7 Axon shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below.

7.8 The insurance specified in (7.1), (7.2), and (7.6) above shall: (i) name County including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and, (ii) provide that such insurance is primary coverage with respect to all insureds and additional insureds.

7.9 The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.

7.10 Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to

the insurance policies, against County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

7.11 Axon shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Axon shall require all insurers to provide County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

8. Indemnification and Limitation of Liability.

8.1 Axon agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County, and its agents, officers and employees, from and against any and all claims, actions, or liabilities, including reasonable attorney's fees, caused by any wrongful, intentional, or negligent act or omission of Axon, or its agents which may arise out of or are connected with the activities covered by this Agreement.

8.2 **LIMITATION OF LIABILITY.** EXCEPT AS SET FORTH IN THE INSURANCE, WARRANTY, INDEMNIFICATION AND LIABILITY PROVISIONS OF THIS HOC ADDENDUM AND/OR AGREEMENT, THE TOTAL LIABILITY OF AXON TO COUNTY IN CONNECTION WITH THIS HOC ADDENDUM, FOR ANY AND ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE TWICE THE AMOUNT PAID BY COUNTY TO AXON UNDER THIS HOC ADDENDUM, AGREEMENT OR ANY OTHER DOCUMENT INCORPORATED INTO THE AGREEMENT. NOTHING IN THIS SECTION SHALL LIMIT AXON'S LIABILITY: (A) IN TORT FOR ITS WILLFUL OR INTENTIONAL MISCONDUCT; OR (B) FOR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY AXON'S NEGLIGENCE; OR (C) LOSS OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY AXON'S NEGLIGENCE. NOTHING IN THIS HOC ADDENDUM SHALL BE CONSTRUED TO CONSTITUTE A WAIVER OF ANY OTHERWISE APPLICABLE IMMUNITY OR LIMITATION ON LIABILITY TO COUNTY UNDER WISCONSIN LAWS.

9. Targeted Business Enterprise Participation.

9.1 If required, Axon shall use reasonable efforts to establish Targeted Business Enterprise ("TBE") participation goals, consistent with County TBE goals of up to seventeen (17%) percent for goods, services, purchases and subcontract; and, to use good faith efforts to achieve those goals.

9.2 The Milwaukee County Community Business Development Partners shall assist Axon in soliciting potential TBE vendors for the improvements and monitor such goal attainment. Axon's contact regarding TBE participation is:

Milwaukee County Community Business Development Partners

633 West Wisconsin Avenue, 9th Floor
Milwaukee, WI 53233
STAFF EMAIL cbdp@milwaukeecountywi.gov
STAFF PHONE NO. 414-278-4747

9.3 The Parties agree that **no** TBE goal has been established and no goal is required under this HOC Addendum.

10. Warranties. Axon hereby warrants to the County as follows:

10.1 **Title.** Axon warrants that it has full title to and ownership of each of the Services provided to County under the HOC Addendum or any related document, and that it has full power and authority to grant the licenses granted to County by the Agreement. County's use of each of the Services will in no way constitute an infringement or other violation of any copyright, trade secret, trademark, patent, or other proprietary right of any third party. There is currently no actual or threatened suit by any third party based on an alleged violation of its rights by Axon.

10.2 **Performance.** Each of the Services will function properly, be free of material defects, and operate in a substantial conformance with the representation made by Axon.

10.3 **Viruses, etc.** Each Service that is provided by Axon to County under the terms of the HOC Addendum or related document shall be free at the time of receipt by County, of any monitoring device, any programs, subroutines, code, instructions, data, functions (including but not limited to viruses, worms, date bombs or time bombs), the purpose of which is to intentionally cause the Services to cease operating, or to damage, interrupt, interfere with or hinder the operation of the Services, the system in which it resides, or any other software or data on such system or any other systems with which it is capable of communicating or otherwise permit the unauthorized access to County's systems or data. For avoidance of doubt, the provisions of this Paragraph shall apply to each delivery of the Services, in whole or in part, to County including each error correction, patch, update, workaround or other similar interim or partial delivery form of the Services.

10.4 **New Versions.** Axon shall provide updates, new releases and enhancements to the Services during the Term of the HOC Addendum.

10.5 **Renamed, Repackaged, Re-bundled or Re-branded.** Should the Services provided to County under the HOC Addendum be renamed, repackaged, re-bundled or re-branded for any reason including, but not limited to, a merger or acquisition of Axon, then County shall be entitled to the same number of licenses to use, access, and benefit from the renamed, repackaged, re-bundled or re-branded product as County currently owns of the prior product/service at no additional charge to County so long as the renamed, repackaged, re-bundled or re-branded product is functionally equivalent at the license level, at a minimum.

10.6 **Product Sunset.** In the event a Service is superseded or discontinued, or should any portion of the Service's licensed functionality be removed from the Service and made part of another product not licensed by County, Axon will provide and County will automatically be licensed for any other of Axon's Service(s) that can accomplish the

Services' function in any other condition, at no cost to County, provided such replacement product exists, and also provided that County is current with its Fees.

10.7 **Remedies.** If a Service does not conform to the warranties made by Axon in the HOC Addendum, or is otherwise defective, Axon shall correct the errors or non-conformities within ten (10) days of notice from County. If Axon does not remedy any and all defects in the Services within such period, County may elect to terminate the Agreement as to such Services and any other Services dependent thereon, and County shall be entitled to a prorated refund of the Fees for all unused Services. Upon return of the Fees, County shall return or destroy the Services and the HOC Addendum and Agreement shall terminate as to such Service.

11. **Taxes.** County is exempt from state and local taxes. Any invoices submitted by Axon should be without such taxes. Axon shall be responsible for all federal, state and local permits, licenses, and fees, together with all governmental filing related thereto, which arise out of the performance of services or delivery of Axon Services hereunder, or which arise as a result of fees paid hereunder. County will provide Axon with a valid tax exemption certificate upon written request.

12. **Maintenance of Records; Audits.**

12.1 **Maintenance of Records.** Axon shall maintain accurate and complete documents and records relating to charges under the Agreement and documents relating to confidentiality, subcontracts and intellectual property ownership. All financial records shall be maintained in accordance with generally accepted accounting principles. All such documents and records shall be kept and maintained by Axon and shall be made available to the Agency during the term of the Agreement and for a period of three (3) years thereafter unless the Agency provides Axon with permission to dispose of any such material prior to such time. Such audit shall take place at County's reasonable request in writing.

12.2 **County's Right to Audit.** Pursuant to Section 56.30(6)I of the Milwaukee County Code of General Ordinances, Axon, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of Axon and/or its contractors related to the performance of the Agreement, including without limitation, (i) the accuracy of Axon's invoices, (ii) audits and examination performed or required by regulatory authorities, (iii) validating compliance with the Agreement, (iv) compliance with applicable laws and regulations; and, (v) compliance with County's policies and procedures referred to the Agreement; for a period of up to three (3) years following the date of last payment under the Agreement. Axon shall provide to County (or its Designated Personnel) any assistance they may reasonably require in connection with such audits and inspections.

12.3 Any contractors or other parties performing work on the Agreement will be bound by the same terms and responsibilities as Axon. All subcontracts or other agreements for work performed on the Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. Any and all

County contracts and solicitations for contracts shall include a statement that the contractor and any subcontractors understand and will abide by the requirements of this section.

13. Public Records.

13.1 Both Parties understand that County is bound by the public records law, and as such, all of the terms of the Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Axon hereby agrees that it shall be obligated to assist County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made. Except as otherwise authorized by County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under the Agreement.

13.2 In the event that County receives a request to disclose any Axon information defined as “Confidential Information” or labeled as such by Axon, County will promptly provide Axon notice of the open records request to enable Axon to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by County. In the event the designation of “Confidential Information” of such Axon information is challenged by the requestor and Axon resists disclosure by County, Axon hereby agrees to provide legal counsel or other necessary assistance to County to defend the designation of confidentiality and agrees to indemnify and hold County harmless for any costs or damages arising out of County’s agreement to withhold such Axon information from disclosure.

14. Assignment, Merger or Acquisition and Subcontracting.

14.1 **Assignment, Merger or Acquisition.** Neither Party may assign or transfer any of its rights or obligations under the HOC Addendum and/or Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Assigning Party shall obtain the written agreement of the proposed assignee to be bound and abide by the Agreement and this Agency HOC Addendum. Notwithstanding the foregoing, Axon may assign or transfer the HOC Addendum and/or Agreement in the event of a merger, consolidation, stock transfer or sale of all or substantially all of its assets, provided however, that any such assignee (i) is not debarred from doing business in the State of Wisconsin; and, (ii) holds similar or larger market share in the software industry. Any attempt to assign or transfer the HOC Addendum and/or Agreement or any other Agreement in contravention of this Paragraph is void.

14.2 **Subcontracting.** Assignment of any portion of the work by subcontract by the Axon must have the prior written approval of the Agency. Any subcontractors or other parties performing work on behalf of Axon under the Agreement must agree to be bound by the same terms and conditions as Axon in writing.

15. No Waiver.

Unless in writing, no failure or delay by a Party to exercise any right it may have under the HOC Addendum, shall operate as a waiver or modification of the HOC Addendum and shall be construed to be a waiver of the right of such Party thereafter to enforce each and every provision of the HOC Addendum. No waiver by a Party of any breach of the HOC Addendum shall be deemed a waiver

of any other breach. A Party's failure to enforce its rights with respect to any single or continuing breach of the HOC Addendum will not act as waiver of the right of that Party to later enforce such rights or to enforce any other or a subsequent breach.

16. Force Majeure.

Except with respect to the payment of fees hereunder, neither Party will be liable to the other for any failure or delay in performance under the HOC Addendum due to circumstances beyond its reasonable control, limited to, Acts of God, war, terrorist acts and official, governmental and judicial action not the fault of the Party failing or delaying in performance, or the threat of any of the foregoing. Force majeure shall not be allowed unless within ten (10) calendar days of the occurrence of force majeure, the Party whose performance is delayed thereby shall provide the other Party with a written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

17. Conflict of Interest and Non-Collusion.

17.1 Conflict of Interest. Axon will not knowingly employ as a director, officer, employee, agent or subcontractor any elected or appointed office of County or any member of his/her immediate family.

17.2 Non-Collusion. Axon hereby represents and agrees that it has no way entered into any contingent fee arrangement with any firm, employee of County, or other person or entity concerning the obtaining of the Agreement. In addition, Axon agrees that a duly authorized Axon representative will sign a non-collusion affidavit, in a form acceptable to County that Axon has not received from County any incentive or special payments, or considerations not related to the provision of the software and services described in the Agreement.

17.3 County Fraud Hotline. Axon agrees to post in locations accessible to its employees County provided bulletins concerning the County Fraud Hotline.

18. Affirmative Action

Axon confirms that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d), to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d). Axon assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. Axon assures that it will require that its covered organizations provide assurances to Axon that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.

19. Independent Contractor

Nothing contained in the HOC Addendum and/or Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Axon or its successors or assigns. In entering into the HOC Addendum and/or Agreement, and in acting in

compliance herewith, Axon is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Nothing contained in the HOC Addendum and/or Agreement shall give Axon any authority to supervise, manage, and/or direct County employees.

20. Milwaukee County Directives

The following Milwaukee County Directives, which were previously signed by Axon, are incorporated by reference into the Agreement:

- 20.1 Milwaukee County Remote Network Access Directive for Vendors (Exhibit A);
and,
- 20.2 Milwaukee County Acceptable Use of Technology Directive for Vendors (Exhibit B).

21. Pandemic Preparedness.

21.1 Axon is responsible for compliance with all state, federal, and local orders, including Milwaukee County Administrative Orders, and all regulations and laws regarding the COVID-19 pandemic. Further, Axon will follow all relevant agency guidance, specifically issued by the CDC, including, but not limited to, social distancing, hygiene, sanitation of workspaces, providing proper personal protective equipment to staff, proper staff screening methods and education of staff.

21.2 If determined applicable by the County, Axon should have a written Pandemic Preparedness Plan that complies with all applicable laws, regulations, orders, and agency guidelines regarding COVID-19 and, at a minimum, meets the requirements in the Milwaukee County COVID-19 Response Preparedness Plan Checklist, attached to this Amendment as Exhibit 1.

IN WITNESS WHEREOF, the Parties hereto have executed this HOC Addendum to be effective on the HOC Addendum Effective Date.

MILWAUKEE COUNTY HOUSE OF CORRECTION

Signature Page to Follow