



ITEM # 20-0047

Field Trial Agreement

This Agreement grants the right to use the Axon Enterprise, Inc. ("Axon") Trial Kit(s) identified in this Agreement to your law enforcement agency ("Agency") on loan and free of charge for a trial and evaluation of the Trial Kit by Agency.¹ The Trial Period is 30 days unless extended by Axon.

1. Trial Kit. The Trial Kit may include the following:

Qty. _____	74016 – Axon Body 2 T&E Kit
Qty. _____	70042 – Axon Body 2 Dock, Single Camera Bay
Qty. _____	70043 – Axon Body 2 Dock, 6-Camera Bay
Qty. _____	73210 – Axon Body 3 T&E Kit
Qty. _____	74213 – Axon Body 3 – 1 Bay Dock, T&E
Qty. _____	74212 – Axon Body 3 – 8 Bay Dock, T&E
Qty. _____	11530 – Axon Flex 2 T&E Kit
Qty. _____	11541 – Axon Flex 2 Single-Bay Dock
Qty. _____	11542 – Axon Flex 2 Six-Bay Dock
Qty. _____	20025 – TASER 7 CEW
Qty. _____	20026 – TASER 7 Dock
Qty. _____	80088 – TASER 7 T&E Target
Qty. _____	11007 – X26P CEW T&E Kit
Qty. _____	22004 – X2 CEW T&E Kit
Qty. _____	71089 – Axon Fleet 2 Kit
Qty. _____	11524 – Axon Signal
Qty. _____	11559 – T&E, PPM, Signal
Qty. _____	71043 – Axon Signal Sidearm
Qty. _____	Axon Evidence (Evidence.com)
Qty. _____	Fleet in a Box
Qty. _____	Trial - Axon Redaction Assistant
Qty. _____	Trial - Axon Performance
Qty. _____	Trial - Axon Auto-Tagging
Qty. _____	Trial - Axon Citizen for Communities
Qty. _____	Trial - Axon Aware+

Axon may limit the number of Trial Kits Agency receives. Axon may supply a refurbished Trial Kit. Axon's warranty, limitations and releases for the Trial Kits is applicable and available on Axon's website at www.axon.com/legal.

2. Agency Obligations. Agency agrees to only use the Trial Kit for trial and evaluation purposes and will not: (a) reproduce or modify the Trial Kit; or (b) rent, sell, lease or otherwise transfer the Trial Kit. Agency agrees to comply with all Axon training materials regarding the Trial Kit during the Trial Period. For Trial Kits that contain a conducted energy weapon ("CEW"), Agency agrees that every employee or agent that carries, uses, or deploys the CEW during the Trial Period will have: (a) obtained certification as a TASER CEW user or instructor; and (b) completed any training specific to the CEW model by utilizing the current TASER CEW lesson plan. Upon request by Axon, Agency agrees to cooperate and participate in a case study involving the Trial Kit and Agency's use of the Trial Kit. Agency agrees that Axon will have a non-exclusive, perpetual license to utilize the results and any report or publication resulting from the case study in Axon's training, markets and sales materials. If Agency's trial includes Axon Fleet, and Agency is using wireless offload, then Agency is responsible for providing either a cellular SIM card or wireless network at Agency. For use of Axon Performance, Axon may need to access and store Agency's call for service records.

3. Return of Product. Agency agrees to return the Trial Kit to Axon within 10 days after the end of the Trial Period, excluding used CEW cartridges. If any individual component of the Trial Kit is not returned to Axon at the end of the

Trial Period, Axon will invoice Agency the MSRP of the unreturned items in the Trial Kit(s). Agency agrees to pay the invoice along with any applicable taxes and shipping. Agency will return the Trial Kit to Axon in good working condition, normal wear and tear excepted. Axon may charge Agency if there is damage beyond normal wear and tear.

Before Agency returns the Trial Kit, it is Agency's responsibility to download any data and keep a backup copy of the data. All data stored in the Trial Kit will be erased upon receipt of the Trial Kit by Axon. Agency will return the Trial Kit to: Axon Enterprise, Inc., 17800 N. 85th Street, Scottsdale, Arizona USA 85255, Attention: Trial Returns.

4. Agency Data. Within 30 days of the Trial Period ending, Agency may request Axon make available to Agency for download Agency data that Agency uploaded to Axon Evidence during the Trial Period. During the 30 days following this request, Agency may retrieve its data from Axon Evidence. After this 30-day period, Axon will have no obligation to maintain or provide any data uploaded to Axon Evidence and will thereafter, unless legally prohibited, delete all of this data in Axon's systems or otherwise in its possession or control.

5. 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 the Trial Kit. Agency will not directly or indirectly cause any proprietary rights to be violated.

Formal Matters.

A. Signature. Your signature warrants and acknowledges that you are authorized to execute this Agreement on behalf of your Agency.

B. Entire Agreement. This Agreement, including the attached Axon Evidence Terms of Use Appendix, Axon Auto-Tagging Appendix, and Axon Aware Appendix (to the extent such appendices are applicable), contains all the terms and conditions agreed on by the parties regarding the Trial Kit. Any previous agreements between the parties regarding a free trial of the Trial Kit are replaced by this Agreement. This Agreement can be modified or changed only by a written instrument signed by both parties. If any part of this Agreement is held indefinite, invalid, or otherwise unenforceable, the rest of the Agreement will continue in full force and effect.

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

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

ACCEPTED and AGREED as of _____, 2019

Agency Name: _____

Signature: _____

Printed Name: _____

Title: _____

Address: _____

Phone: _____ E-mail: _____

¹ This Agreement does not cover trials or evaluations solely of any Axon beta software or firmware.

CradlePoint is a trademark of CradlePoint, Inc.

▲ ▲ AXON, Axon, Axon Body 2, Axon Dock, Axon Evidence, Axon Flex 2, Axon Fleet, Axon Signal, Axon Signal Sidearm, Evidence.com, X2, X26P, TASER 7, and TASER are trademarks of Axon Enterprise, Inc., some of which are registered in the US and other countries. For more information, visit www.axon.com/legal. All rights reserved. © 2019 Axon Enterprise, Inc.

Title: General Field Trial Agreement for All Products (90 Days)

Department: Legal

Version: 9.0

Release Date: 8/1/2019



Field Trial Agreement

Axon Evidence (Evidence.com) Terms of Use Appendix

- 1 **Definitions.**

"Agency Content" is data uploaded into, ingested by, or created in Axon Evidence within a Customer's tenant. Agency Content includes Evidence but excludes Non-Content Data.

"Axon Devices" means physical devices from Axon, including TASER Smart Weapons and Cartridges, Axon Docks, Axon Cameras, and Axon Signal.

"Evidence" is media or multimedia uploaded into Axon Evidence as 'evidence' by a Customer. Evidence is a subset of Agency Content.

"Non-Content Data" is data, configuration, and usage information about Agency's Axon Evidence tenant, Axon Products and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
- 2 **Access Rights.** Upon the granting of a subscription from Axon, Agency will have access and use of Axon Evidence for the storage and management of Agency Content during the Trial Period.
- 3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Axon Evidence to Agency and Agency end users.
- 4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure 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.
- 5 **Data Privacy.** Axon will not disclose Agency Content or information about Agency except as compelled by a court or administrative body or required by law or regulation. If Axon receives a disclosure request for Agency Content, Axon will give Agency notice so Agency may file an objection with the court or administrative body. Agency agrees to allow Axon access to certain information from Agency to: (a) perform troubleshooting services upon request or as part of regular diagnostic screening; (b) enforce this Agreement or policies governing the use of Axon Evidence; or (c) perform analytic and diagnostic evaluations of the systems.
- 6 **Data Storage.** Axon may transfer Agency Content to third party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Evidence remains within the United States. Ownership of Agency Content remains with Agency.
- 7 **Suspension of Axon Evidence Services.** Axon may suspend Agency access or any end user's right to access or use any portion or all of Axon Evidence immediately upon notice, in accordance with the following: the Agency or an end user's use of or registration for the Axon Evidence Services (i) poses a security risk to the Axon Evidence Services or any third party, (ii) may adversely impact the Axon Evidence Services or the systems or content of any other customer, (iii) may subject Axon, Axon's affiliates, or any third party to liability, or (iv) may be fraudulent. Axon will not delete any of Agency Content on Axon Evidence as a result of a suspension, except as specified elsewhere in this Agreement.
- 8 **License Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
 - 8.1. copy, modify, tamper with, repair, or create derivative works of any part of Axon Evidence;
 - 8.2. reverse engineer, disassemble, or decompile Axon Evidence or apply any process to derive any source code included in Axon Evidence, or allow others to do the same;
 - 8.3. access or use Axon Evidence with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 8.4. use trade secret information contained in Axon Evidence, except as expressly permitted in this Agreement;
 - 8.5. access Axon Evidence to build a competitive product or service or copy any features, functions, or graphics of Axon Evidence;
 - 8.6. 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 Axon Evidence; or
 - 8.7. use Axon Evidence to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.



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Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto populate Axon video meta-data with a case ID, category, and location based on data maintained in Agency's CAD or RMS. Agency must purchase Axon Auto-Tagging for every Axon Evidence user in Agency, even if the user does not have an Axon body camera.
- 2 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 2.1. Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 2.2. Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 2.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 2.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 2.5. Promptly install and implement any and all software updates provided by Axon;
 - 2.6. Ensure that all appropriate data backups are performed;
 - 2.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 2.8. Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 2.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 2.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 3 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use, and will provide an initial list to Agency. Agency is responsible for, and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



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Axon Aware Appendix



- 1 **Scope of Axon Aware.** The scope of Axon Aware is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Aware outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Aware to better meet Agency's needs. In the event Agency does not stop using Axon Aware at the end of the Trial Period, Axon may charge Agency for continued use.
- 2 **LTE Requirements.** Axon Aware is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
- 3 **Axon Aware Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

Agency of Santa Fe (Agency) and Axon Enterprise, Inc. (Axon)

ADDENDUM TO FIELD TRIAL AGREEMENT

1. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Agency and the Axon, whichever occurs last, and shall terminate 30 days from the effective date, unless sooner pursuant to the Termination Article below.

2. TERMINATION

This Agreement may be terminated by the Agency upon 10 days written notice to the Axon.

3. INDEMNIFICATION

AXON shall indemnify, hold harmless and defend the AGENCY from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from AXON's negligent performance under this Agreement as well as the negligent performance of AXON's employees, agents, representatives and subcontractor.

4. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the AGENCY in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The AGENCY and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

5. APPLICABLE LAW; CHOICE OF LAW; VENUE

AXON shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the AGENCY of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the AXON agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

6. INSURANCE

AXON shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. AXON shall furnish the AGENCY with proof of insurance of AXON's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

7. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the AGENCY and the AXON. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

8. SEVERABILITY


In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

Signature Lines required:

City of Santa Fe:


Jarel LaPan Hill, Interim City Manager

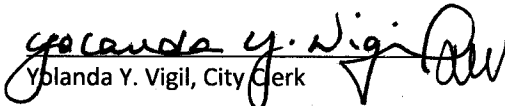
AXON:


Robert Driscoll, VP, Associate General Counsel


Date: _____

Date: 1/15/20

Attest:


Yolanda Y. Vigil, City Clerk

City Attorney's Office:

 1/21/20
Senior Assistant City Attorney

Approved:


Mary McCoy, Finance Director