

From: [Conor Boughey](#)
To: [Jeannette F. Chavez](#)
Cc: [Lorissa Huey](#)
Subject: FW: Police Body Cams - Indemnification with Vendor?
Date: Friday, March 15, 2019 1:09:06 PM
Attachments: [image001.png](#)
[image003.png](#)
[RE: Police Body Cams - Indemnification with Vendor.msg](#)

Hi Jeannette –

Below is a response from the City of Anaheim, who us with Axon/Taser. I also attached info from the city of santa barbara.

These were the only responses received.

Kind Regards,

Conor Boughey, ARM
First VP, Specialty Group
Alliant Insurance Services, Inc.

100 Pine Street, 11th Floor
San Francisco, CA 94111

D 415-403-1411
O 415-403-1400
C 415-744-4889

www.alliant.com

CA License No. 0C36861



From: Dave Nunley [<mailto:DNunley@anaheim.net>]

Sent: Tuesday, January 29, 2019 4:28 PM

To: Conor Boughey <cboughey@alliant.com>; Jena Covey (Jcovey@bakersfieldcity.us) <Jcovey@bakersfieldcity.us>; Betsy McClinton (emccclinton@burbankca.gov) <emccclinton@burbankca.gov>; Cathy Talongwa <ctalongwa@modestogov.com>; 'Michael Andersen' <mandersen@monterey.org>; Claudia Koob (Claudia.koob@mountainview.gov) <Claudia.koob@mountainview.gov>; Jeannette F. Chavez <jfchavez@ontarioca.gov>; Sandra Blanch (Sandra.Blanch@cityofpaloalto.org) <Sandra.Blanch@cityofpaloalto.org>; Rhonda Combs <rhondac@ci.salinacalifornia.gov>; Mark Howard <MHoward@SantaBarbaraCA.gov>; Patty Haymond (phaymond@cityofsantacruz.com) <phaymond@cityofsantacruz.com>; Deb Hossli <Deb.Hossli@SMGOV.NET>; 'Charlotte Dunn' <Charlotte.Dunn@visalia.city>; Oles.Gordeev@SMGOV.NET; Kathy Garozzo (kgarozzo@ontarioca.gov) <kgarozzo@ontarioca.gov>; Marisa Kahn (mkahn@SantaBarbaraCA.gov) <mkahn@SantaBarbaraCA.gov>

Subject: RE: Police Body Cams - Indemnification with Vendor?

This message has originated outside the organization.

I include below language from our contract with Evidence.com, which is the Taser cloud service. Note that there is a limitation of liability and they were amenable to limiting their liability to the greater of \$1M or the amount of insurance they maintain and collect. Remember that if they have a breach and release of video it is a professional liability claim. Taser has a shedload of money so I am not worried about them not being able to fund a liability. The Anaheim contracts were rushed due to wanting to be an early adopter.

Remember that the data in the cloud is the agency's data not Taser's so that the cyber coverage would be the agency's coverage.

Dave

David A. Nunley, CPCU, ARM, AIC
Risk Manager
City of Anaheim Human Resources Department-Risk Management
Office 714-765-4382/Cell 714-272-2025/ FAX 714-765-5245
Jaime Perez, Executive Secretary Office 714-765-4380



THE EVIDENCE.COM SERVICES.

17. Indemnification and Hold Harmless. This Section states a party's sole liability to, and the party's exclusive remedy against, the other party for any type of claim specified below.

a. Indemnification by Us. We 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: (a) acts or omissions of us or our subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts arising out of or related to this Agreement any of them may be liable, save and except for damage or injury caused solely by the negligence of you or your agents, officers, or employees; and (b) third-party claim alleging that the use of the Evidence.com Services as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party. You must provide us with prompt written notice of each such claim, tender to us the defense or settlement of each such claim at our expense, and cooperate fully with us in the defense or settlement of each such claim. If we receive notice of an alleged infringement, or if your use of the Evidence.com Services will be prevented by permanent injunction, we may, at our sole option and expense, procure for you the right to continue using the Evidence.com Services as provided in this Agreement, modify the Evidence.com Services so that it no longer infringes, replace the Evidence.com Services with other services of equal or superior functional capability, refund to you all amounts paid by you to us under this Agreement for the Evidence.com Services 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. We have 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 Evidence.com Services by you or any third party not approved by us; (b) use of the Evidence.com Services in connection or in combination with equipment, devices, or services not approved or recommended by us; (c) the use of Evidence.com Services 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 us as part of or in connection with the Evidence.com Services. Nothing in this Section will affect any warranties in favor of you that are otherwise provided in or arise out of this Agreement.

b. Hold Harmless by You. To the extent permitted by your jurisdiction's local law, you will 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) you or any of your end users' use of the Evidence.com Services (including any activities under your account and use by your employees and agents); (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. You agree to fund any liabilities assumed by this section which would typically be covered through liability insurance by means of self-insurance, by providing coverage through a Joint Powers Insurance Authority ("JPIA") duly formed under the laws of the State of California or by utilizing a combination of self-insurance and JPIA coverage.

18. Limitations of Liability. WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, 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 EVIDENCE.COM SERVICES, INCLUDING AS A RESULT OF ANY (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE EVIDENCE.COM SERVICES, (ii) OUR DISCONTINUATION OF ANY OR ALL OF THE EVIDENCE.COM SERVICES, OR, (iii) WITHOUT LIMITING ANY OTHER OBLIGATIONS, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE EVIDENCE.COM 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 EVIDENCE.COM SERVICES; 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 \$1,000,000 or the amount of insurance maintained and collectible for payment of losses as carried by TASER.

From: Conor Boughey <cboughey@alliant.com>

Sent: Tuesday, January 29, 2019 3:49 PM

To: Dave Nunley <DNunley@anaheim.net>; Jena Covey (Jcovey@bakersfieldcity.us) <Jcovey@bakersfieldcity.us>; Betsy McClinton (emccclinton@burbankca.gov) <emccclinton@burbankca.gov>; Cathy Talongwa <ctalongwa@modestogov.com>; 'Michael Andersen' <mandersen@monterey.org>; Claudia Koob (Claudia.koob@mountainview.gov) <Claudia.koob@mountainview.gov>; Jeannette F. Chavez <jfchavez@ontarioca.gov>; Sandra Blanch (Sandra.Blanch@cityofpaloalto.org) <Sandra.Blanch@cityofpaloalto.org>; Rhonda Combs <rhondac@ci.salinas.ca.us>; Mark Howard <MHoward@SantaBarbaraCA.gov>; Patty Raymond (phaymond@cityofsantacruz.com) <phaymond@cityofsantacruz.com>; Deb Hossli <Deb.Hossli@SMGOV.NET>; 'Charlotte Dunn' <Charlotte.Dunn@visalia.city>; Oles.Gordeev@SMGOV.NET; Kathy Garozzo (kgarozzo@ontarioca.gov) <kgarozzo@ontarioca.gov>; Marisa Kahn (mkahn@SantaBarbaraCA.gov) <mkahn@SantaBarbaraCA.gov>

Subject: Police Body Cams - Indemnification with Vendor?

Good Afternoon Board Members –

I received a question about the agreement between a City and Taser/Axon and I am hoping you may be able to provide feedback.

The City is considering signing an agreement, and is concerned about the data housing portion of the agreement. They will be paying to store data in the cloud (vendors), and would like to be indemnified for the vendor's services. Have any of you gone through this process? What indemnification were you able to obtain? What insurance limits and for what lines of coverage?

The concern is the data being housed on the cloud, a potential breach and release of video from the cloud, causing damage and a claim against the City. It seems like a very real concern to me, and I am wondering what limits/line of coverages/indemnification your entity was able to obtain.

Thank you in advance!

Kind Regards,

Conor Boughey, ARM
First VP, Specialty Group
Alliant Insurance Services, Inc.

100 Pine Street, 11th Floor
San Francisco, CA 94111

D 415-403-1411
O 415-403-1400
C 415-744-4889
F 415-874-4811

www.alliant.com

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