

Doc #:
22313
ShotSpotter, Inc. (08)
copy 14

CONTRACT FOR SERVICES

THIS AGREEMENT, dated as of _____, 2008 (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), is entered into by and between (i) Nassau County, a municipal corporation having its principal office at 1550 Franklin Avenue, Mineola, New York 11501 (the "County"), acting on behalf of the Nassau County Police Department, having its principal office at 1490 Franklin Avenue, Mineola, New York 11501 (the "Department"), and (ii) ShotSpotter, Inc., corporation authorized to do business in New York State, having its principal office at _____ (the "Contractor").

WITNESSETH:

WHEREAS, the County desires to hire the Contractor to perform the services described in this Agreement and the proposal attached hereto; and

WHEREAS, this is a personal service contract within the intent and purview of Section 2206 of the County Charter;

WHEREAS, the Contractor desires to perform the services described in this Agreement and the proposal attached hereto;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Term. This Agreement shall commence on execution of the Agreement by all parties and terminate four (4) years after acceptance of the System (as defined below), unless sooner terminated in accordance with the provisions of this Agreement, or unless the term is extended by mutual agreement of the parties in writing. The Contractor shall perform during the initial four year term System design, installation and acceptance testing services, and provide a one year warranty and three years of additional maintenance and support, as described in Section 2 hereof, to commence the day after the first year anniversary of System Acceptance (as defined below).

2. Services. The services to be provided by the Contractor under this Agreement shall consist of designing, supplying, installing and testing in accordance with the Acceptance Testing procedures referenced herein in Section 4, a ShotSpotter Wireless Gunshot Detection and Location System ("System") in a designated three (3) square mile in Nassau County, New York, as more particularly described and designated in the "Scope of Services" section of the proposal attached hereto. Contractor will provide warranty services for one (1) year following Acceptance of the System by the County as set forth in Section 4 hereof, and in accordance with the exclusive limited warranty provisions of the Contractor's General Terms and Conditions, attached hereto as Appendix A. Also, Contractor shall provide an additional three (3) years of maintenance and support, which shall commence upon the expiration of the initial one (1) year warranty term, shall expire three (3) years thereafter, and which may be renewed in accordance with Section 3 hereof. Collectively, the foregoing shall be referred to as the "Services."

Provided, however, that Contractor shall not be responsible for, and the Services shall not include, obtaining leases, licenses or permissions from the owners or lessees of real property and/or improvements upon which the System sensors are to be located ("Site Permissions"), which shall be the sole responsibility of the County, provided that the Contractor will provide reasonable assistance to the County, including attending meetings to describe the System and its operations, in connection with the County's efforts to secure Site Permissions. Further, provided, that video surveillance software interface programming and Integration services are independent of and separate from this Agreement and not included in the Services, and any integration with video surveillance systems shall not be performed by Contractor.

The County agrees to use its best efforts to obtain complete executed Site Permissions within one year of execution of this Agreement and if necessary, within two years of the execution of this Agreement provided the County makes every effort to secure Site Permissions in an expedited manner.. The County acknowledges that Contractor cannot perform System installation and acceptance testing until Site Permissions are secured. Contractor agrees that it will complete supplying and installing the System, ready for Acceptance testing, within ninety (90) days of the County's completion of obtaining Site Permissions.

Contractor's Services, including, without limitation, warranty terms and conditions, shall be provided subject to and in accordance with the Contractor's General Terms and Conditions, attached hereto as Appendix A. Use of Contractor's proprietary System technology and software shall be licensed to the County and certain other state and federal law enforcement agencies operating within Nassau County accordance with and subject to the terms and conditions of the Contractor's Gunshot Location System Software License, attached hereto as Appendix B. Contractor's warranty and support and maintenance services shall be provided subject to and in accordance with the terms and conditions of the Contractor's Maintenance and, Support Terms and Conditions, attached hereto as Appendix C, all of which are hereby incorporated into this Agreement by reference.

3. Payment. (a) Amount of Consideration. The maximum amount ("Maximum Amount") to be paid to the Contractor as full consideration for the Contractor's Services under this Agreement shall be equal to the sum of the total amounts set forth below, and payable as follows:

The total purchase price for designing, supplying, installing and testing the Wireless Gunshot Location System and 100 seat PSC Mobile and PSC License Payments and one year warranty and three years of additional maintenance and support shall be **\$833,000 (Eight Hundred Thirty-three Thousand Dollars)**, payable as follows:

-- First Payment: **\$150,750 (One Hundred Fifty Thousand Seven Hundred and Fifty Dollars)** shall be due and payable upon completion of the kickoff meeting, and Contractor's completion of a site survey and a Radio Frequency survey with the feedback and assistance of the County.

-- Second Payment **\$301,500 Three Hundred One Thousand Five Hundred Dollars** shall be due and payable upon Contractor's shipment and County's receipt of the Wireless GLS equipment . The Contractor acknowledges that said equipment shall not be shipped to the County until Site Permissions needed for the installation of the Sensors has been obtained by the County; and .

-- Third Payment **\$380,750 (Three Hundred Eighty Thousand Seven Hundred Fifty Dollars)** shall be due and payable within ten (10) days of Acceptance of the System by the County, in accordance with the acceptance provisions in Section 4 of this Agreement.

After the expiration of the one (1) year warranty and three (3) years of service and maintenance, extended warranty services shall be renewable, and Contractor shall provide such extended warranty services on the terms and conditions set forth herein and in Appendix C hereto, for up to five (5) successive renewal terms of one (1) year each. Such renewal shall be pursuant to the terms and conditions set forth in Appendix C "ShotSpotter Maintenance and Support Agreement" Section 1B. In the event support and maintenance term is renewed for another year following the expiration of the renewal term in effect, the Contractor shall invoice the County for the annual support and maintenance fee applicable to the renewal term, as set forth below, which invoice(s) the

County shall pay upon receipt.

1st renewal term - **\$87,675 (Eighty Seven Thousand Six Hundred Seventy-five Dollars)**

2nd renewal term - **\$90,307 (Ninety Thousand Three Hundred Seven Dollars)**

3rd renewal term - **\$93,016 (Ninety-three Thousand Sixteen Dollars)**

4th renewal term - **\$95,806 (Ninety-five Thousand Eight Hundred Six Dollars)**

5th renewal term - **\$98,680 (Ninety-eight Thousand Six Hundred Eighty Dollars)**

(b) Vouchers; Voucher Review, Approval and Audit. Payments shall be made to the Contractor in arrears and shall be contingent upon (i) the Contractor submitting a claim voucher (the "Voucher") in a form satisfactory to the County, that (a) states with specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the County supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the County Comptroller or his or her duly designated representative (the "Comptroller") which shall not be unreasonably withheld, delayed or conditioned.

(c) Timing of Payment Claims. The Contractor shall submit claims no later than three (3) months following the County's receipt of the services that are the subject of the claim and no more frequently than once a month.

(d) No Duplication of Payments. Payments under this Agreement shall not duplicate payments for any work performed or to be performed under other agreements between the Contractor and any funding source including the County.

(e) Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Contractor following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Contractor received notice that the County did not desire to receive such services.

4. Acceptance Testing and System Acceptance. Following installation, Contractor will test (and, if necessary tune and troubleshoot) the System, for conformity to the acceptance criteria set forth in the Customer Acceptance Test form attached hereto as part of Appendix D. The System shall be deemed accepted and the County agrees to accept the System and execute the Customer Acceptance Form, upon Contractor's demonstrating to the County that the acceptance criteria set forth in Exhibit D have been met. ("Acceptance") Such acceptance testing shall be conducted in accordance with the Contractor's standard System Troubleshooting and Handover Procedures, which are also attached hereto as part of Appendix D, and incorporated herein by reference.

5. Independent Contractor. The Contractor is an independent contractor of the County. The Contractor shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

6. No Arrears or Default. The Contractor is not in arrears to the County upon any debt or

contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

7. Compliance with Law. (a) Generally. The Contractor shall comply with any and all applicable Federal, State and local Laws, including, but not limited to those relating to conflicts of interest, discrimination, a living wage, disclosure of information, and vendor registration, in connection with its performance under this Agreement. In furtherance of the foregoing, the Contractor is bound by and shall comply with the terms of Appendix EE attached hereto and with the County's vendor registration protocol. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Nassau County Living Wage Law. Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, the Contractor agrees as follows:

- (i) Contractor shall comply with the applicable requirements of the Living Wage Law, as amended;
- (ii) Failure to comply with the Living Wage Law, as amended, may constitute a material breach of this Agreement, the occurrence of which shall be determined solely by the County. Contractor has the right to cure such breach within thirty days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.
- (iii) It shall be a continuing obligation of the Contractor to inform the County of any material changes in the content of its certification of compliance, attached as Appendix L, and shall provide to the County any information necessary to maintain the certification's accuracy.

(c) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. The Contractor acknowledges that Contractor Information in the County's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the County shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate, and shall protect, through invocation of applicable FOIL exemptions, Contractor's Confidential Information to fullest extent permitted under the FOIL.

8. Confidentiality.

"Confidential Information" means any and all confidential information of a party disclosed to the other party, including, but not limited to, proprietary software, technical information, know-how, trade secrets, processes, law enforcement or investigative information, marketing data, business/financial information, and any information concerning the System obtained in connection with the System purchase, installation or operation, and designated by Contractor from time to time as confidential; System documentation, use and operations manuals; and output data created or compiled by the System. Confidential Information shall not include information which: (a) was

known to the recipient prior to the time of disclosure by the other party; (b) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement by the recipient; (c) is subsequently lawfully received by recipient from a third party without any obligation of confidentiality to the disclosing party; or (d) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority.

The parties acknowledge that in the course of Contractor's efforts in providing the Services to the County hereunder, each may receive Confidential Information of the other party. Any and all Confidential Information in any form or media obtained by a recipient shall be held in confidence and shall not be copied, reproduced, or disclosed to third parties for any purpose whatsoever except as necessary in connection with the Contractor's Services provided under this Agreement. The recipient further acknowledges that it shall not use such Confidential Information for any purposes other than in connection with the recipient's activities contemplated by this Agreement. Each party shall disclose the Confidential Information of the other only to those of its employees, contractors, or consultants having a need to know such Confidential Information and shall take reasonable precautions to ensure that such persons comply with the provisions of this section, including causing such person to agree to confidentiality and non-disclosure terms reasonably acceptable to the disclosing party. A receiving party shall protect the Confidential Information of the disclosing party with at least the same degree of care as it uses to protect its own Confidential Information of a similar nature, but in no case with less than a reasonable degree of care.

In the case of a breach of the confidentiality provisions of this Section 8 the parties hereby agree that their respective remedies at law are inadequate, and consent to equitable enforcement of their obligations under said sections, by a court of appropriate equity jurisdiction hereunder.

(d) Non-Disclosure Agreement (NDA). If requested by the County, the Contractor and the Contractor's personnel and/or agents are providing Services pursuant to this Agreement shall enter into a County issued NDA prior to receiving any County Confidential Information. The County shall enter into, and cause all other contractors or service providers to whom Contractor's Confidential Information may be disclosed, an NDA reasonably acceptable to Contractor prior to using or disclosing any Contractor Confidential Information to any person or entity in connection with integration of the System or data generated by the System with video surveillance equipment or software, or any other purpose.

(e) The provisions of this Section shall survive the termination of this Agreement.

9. Minimum Service Standards. Regardless of whether required by Law: (a) The Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) The Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Contractor operates. The Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement, provided that nothing herein shall be construed to oblige Contractor to obtain or maintain Site Permissions.

10. Indemnification; Defense; Cooperation. (a) The Contractor shall be solely responsible

for and shall indemnify and hold harmless the County, its officers, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence or willful misconduct of the County.

(b) Intellectual Property Infringement Indemnity – Contractor shall indemnify, defend and/or hold harmless the County from and against claims of intellectual property infringement or violation of intellectual property rights to the extent provided in, and subject to the terms, conditions, and limitations of, the provisions of the Contractor's Standard Terms and Conditions (Appendix A) and Gunshot Location System Software License (Appendix B) entitled "IP Infringement; Exclusive Remedy," which are incorporated herein by reference.

(c) The Contractor shall, upon the County's demand and at the County's direction, promptly and diligently defend, at the Contractor's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section and the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(d) The Contractor shall, and shall cause Contractor Agents to, cooperate with the County in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement including the acts or omissions of the Contractor and/or a Contractor Agent in connection with this Agreement.

(e) In the case of any claim asserted by a third party against an Indemnified Party for which indemnification is required under this Agreement, written notice shall be given by the Indemnified Party to the Contractor promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and the Indemnified Party shall permit the Contractor (at the Contractor's expense) to assume and control the defense of any claim or any litigation resulting therefrom; provided, however, that any Indemnified Party may, at its own expense, retain separate counsel to monitor the progress of (but not participate in) such defense. The Contractors shall have the right to defend (and shall have the right to control the defense of) the Indemnified Party by appropriate proceedings; provided, that, except with the prior written consent of the Indemnified Party, Contractor shall not, in the defense of any such claim or litigation, consent to entry of any judgment or enter into any settlement that provides for injunctive or other nonmonetary relief affecting the Indemnified Party or that does not include as an unconditional term thereof the giving by each claimant or plaintiff to such Indemnified Party of a release from all liability with respect to such claim or litigation. In any event, the Contractor and the Indemnified Parties shall cooperate in the defense of any claim or litigation subject to this paragraph and the books and records of each shall be available to the other with respect to such defense thereof.

(f) Indemnification Limit -- In no event shall Contractor have any liability to the County or any one or more Indemnitees for any losses or other amounts incurred or expended in any connection with a single indemnification claim or incident or multiple claims or incidents (whether related or unrelated) in excess of the amount of available insurance. Indemnification obligations limits shall not apply to

Contractor's breach of confidentiality obligations, the ability of a party to obtain injunctive relief, or the Contractor's gross negligence or willful misconduct.

(g) The provisions of this Section 9 state the County's complete and exclusive rights to indemnity or contribution from Contractor, under any legal or equitable theory, regardless of the nature of the claim, loss or injury. The provisions of this Section shall survive the termination of this Agreement.

11. Insurance. (a) Types and Amounts. The Contractor shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "Nassau County" as an additional insured and have a minimum single combined limit of liability of not less than three million dollars (\$3,000,000) per occurrence and five million dollars (\$5,000,000) aggregate coverage; (ii) errors and omissions insurance policy with minimum single combined limit liability of not less than three million dollars (\$3,000,000), and (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law and (iv) such additional insurance as the County, in its reasonable discretion, may from time to time specify.

(b) Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to the County, and which is (ii) in form and substance reasonably acceptable to the County. The Contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The Contractor shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the Department. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Contractor shall provide written notice to the Department of the same and deliver to the Department renewal or replacement certificates of insurance. The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

12. Intellectual Property Rights. Ownership of intellectual property rights in and to the System technology and System Software shall be reserved by Contractor, and use of the System and System Software shall be licensed to the County and certain Nassau County Municipal Entities in accordance with and subject to the terms and conditions of the Contractor's Gunshot Location System Software License, attached hereto as Exhibit B.

13. Assignment; Amendment; Waiver; Subcontracting. This Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County

Executive or his or her duly designated deputy (the "County Executive"), and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.

14. Termination. (a) By the County. This Agreement may be terminated:

(i) for the convenience of the County, upon not less than thirty (30) days' written notice to the Contractor: (1) not earlier than six (6) months after execution of this Agreement, in the event that the County is unable, notwithstanding the County's best efforts to do so, obtain executed Site Permissions for the System during such two (2) year period, whereupon Contractor shall be entitled, as its sole and complete remedy, to be paid and to retain the first milestone payment of **\$150,750 (One Hundred Fifty Thousand Seven Hundred Fifty Dollars)**, payable at execution of the Agreement, and thereafter this Agreement shall be terminated and both parties shall thereafter be relieved of all further obligations and liabilities to one another; and (2) at any time after System installation and Acceptance, whereupon Contractor, as its sole and complete remedy, shall be entitled to be paid and to retain all milestone payments for designing, supplying, installing and testing the System, totaling **\$603,000 (Six Hundred Three Thousand Dollars)**, plus a pro rated portion of the **\$230,000 (Two Hundred Thirty Thousand Dollars)** payment for maintenance and support service, calculated based on the number of months or portion of a month (which shall be counted as a full month) prior to the effective date of termination during which the County was entitled to maintenance warranty and support. Contractor shall refund to the County the balance of the **\$230,000 (Two Hundred Thirty Thousand Dollars)** extended warranty payment after calculation of the foregoing pro ration, whereupon this agreement shall be terminated and both parties shall thereafter be relieved of all further obligations and liabilities to one another;

(ii) for "Cause" by the County immediately upon the receipt by the Contractor of written notice of termination, and (iii) upon mutual written Agreement of the County and the Contractor. As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement, after affording Contractor a thirty (30) day period within which to effect a cure, except that no cure period shall be required for Contractor's breach of the Confidentiality provisions of Section 8; and (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered.

(b) By the Contractor. This Agreement may be terminated by the Contractor for non-payment of any amounts due and payable hereunder, for breach of the County's or any Nassau County Municipal Entity's obligations or violation of Contractor's rights under this Agreement or any other document appended hereto and incorporated herein, or if performance becomes impracticable through no fault of the Contractor, where the impracticability relates to the Contractor's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance.

Termination under this subsection shall be effected by the Contractor delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible, and no notice shall be required for breach of the Confidentiality provisions of Section 8), a notice stating (i) that the Contractor is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Contractor's right to terminate under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.

15. Dispute Resolution

If a dispute, claim or controversy arises out of or arises in connection with this Agreement, including, but not limited to, the termination or validity hereof (a "Dispute"), the parties agree to use the following procedures, in lieu of either party initially pursuing other available remedies, to resolve the Dispute. The Parties agree that they will first attempt to settle any Dispute arising out of this Agreement through good faith negotiations in the spirit of mutual cooperation between representatives of the parties with authority to resolve the Dispute. Prior to taking action as provided in this Agreement, the Parties shall first submit the Dispute to an appropriate representative for each party for resolution, and if such representatives are unable to resolve such Dispute, either party may request that their respective chief executive officers or deputy county executive, attempt to resolve such Dispute through good faith negotiations. The officers or delegates to whom any such claim or controversy is submitted shall attempt to resolve the Dispute through good faith negotiations over a reasonable period, not to exceed 30 days in the aggregate unless otherwise agreed. Such 30-day period shall be deemed to commence on the date of a notice from either party describing the particular Dispute.

16. Accounting Procedures; Records. The Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles . Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

17. Limitations on Actions and Special Proceedings against the County. No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief the Contractor shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Contractor shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary moving papers of the Contractor shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the County.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

18. Work Performance Liability. The Contractor is and shall remain primarily liable for the successful completion of the Services in accordance this Agreement irrespective of whether the Contractor is using a Contractor Agent to perform some or all of the Services contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the County.

19. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court in Nassau County in New York State or the United States District Court for the Eastern District of New York and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

20. Notices. Any notice, request, demand or other communication required to be given or made in connection with this Agreement shall be (a) in writing, (b) delivered or sent (i) by hand delivery, evidenced by a signed, dated receipt, (ii) postage prepaid via certified mail, return receipt requested, or (iii) overnight delivery via a nationally recognized courier service, (c) deemed given or made on the date the delivery receipt was signed by a County employee, three (3) business days after it is mailed or one (1) business day after it is released to a courier service, as applicable, and (d)(i) if to the Department, to the attention of the Commissioner at the address specified above for the Department, (ii) if to an Applicable DCE, to the attention of the Applicable DCE (whose name the Contractor shall obtain from the Department) at the address specified above for the County, (iii) if to the Comptroller, to the attention of the Comptroller at 240 Old Country Road, Mineola, NY 11501, and (iv) if to the Contractor, to the attention of the person who executed this Agreement on behalf of the Contractor at the address specified above for the Contractor, or in each case to such other persons or addresses as shall be designated by written notice.

21. All Legal Provisions Deemed Included; Severability; Supremacy; Construction. (a) Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.

(b) In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms and conditions set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement, including the provisions of any schedule, exhibit, appendix, or attachment, should be read together as not conflicting.

(d) Each party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

22. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

23. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

24. Administrative Service Charge. The Contractor agrees to pay the County an administrative service charge of **Five Hundred and Thirty-three Dollars (\$533.00)** for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Number 128-2006. The administrative service charge shall be due and payable to the County by the Contractor upon signing this Agreement.

25. Appendices, Exhibits and Attachments. The documents listed below have been attached hereto and are incorporated herein as a part of this Agreement to the extent provided herein:

Contractor's Proposal 2008NCNYPD01182008.3
Appendix A – Contractor's General Terms and Conditions
Appendix B -- Contractor's Gunshot Location System Software License
Appendix C – Contractor's Extended Warranty, Support and Maintenance Terms
Appendix D – Customer Acceptance Test Form and Contractor's System Troubleshooting and Handover Procedures
Appendix EE – EEO
Appendix – L Form of Certificate of Compliance

26. Singular, Plural and Gender. When used in this Agreement, the singular includes the plural, the plural includes the singular, and gender related pronouns include the feminine, masculine and neuter.


27. Executory Clause. Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all County approvals have been obtained, including, if required, approval by the County Legislature, and (ii) this Agreement has been executed by the County Executive (as defined in this Agreement).

(b) Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the County from the state and/or federal governments.

IN WITNESS WHEREOF, the Contractor and the County have executed this Agreement as of the date first above written.

SHOTSPOTTER, INC.

By: 
Name: JAMES G. BELLOUK
Title: PRESIDENT & CEO
Date: 30 MAY 2008



NASSAU COUNTY

By: _____
Name: _____
Title: Deputy County Executive
Date: _____

PLEASE EXECUTE IN BLUE INK

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

See attached

On the ____ day of _____ in the year 200__ before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of _____; that he or she is the _____ of _____, the corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto by authority of the board of directors of said corporation.

NOTARY PUBLIC

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

On the ____ day of _____ in the year 200__ before me personally came _____ to me personally known, who, being by me duly sworn, did depose and say that he or she resides in the County of _____; that he or she is a Deputy County Executive of the County of Nassau, the municipal corporation described herein and which executed the above instrument; and that he or she signed his or her name thereto pursuant to Section 205 of the County Government Law of Nassau County.

NOTARY PUBLIC

State of California)
County of Santa Clara)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

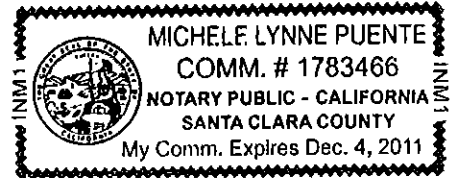
On 30 May 2009 before me, Michele Lynne Puente
(here insert name and title of the officer)

personally appeared James G. Bellock

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- Individual(s)
 Attorney-in-Fact
 Corporate Officer(s) _____
Title(s) _____

- Guardian/Conservator
 Partner - Limited/General
 Trustee(s)
 Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
 form(s) of identification credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

Additional Signer(s) Signer(s) Thumbprint(s)

Appendix EE
Equal Employment Opportunities for Minorities and Women

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

(a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises ("Certified M/WBEs") as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

(e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

(f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.

(g) Contractors for projects under the supervision of the County's Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

(h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.

(i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

(j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

(k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

(l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules ("CPLR").

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term "Best Efforts Checklist" shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term "County Contract" shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term "County Contract" does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term "County Contractor" means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term "County Contractor" shall mean a person or firm who

will manage and be responsible for an entire contracted project.

As used in this Appendix EE "Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises" shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation
- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term "Executive Director" shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term "Subcontract" shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term "Subcontractor" shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

Certificate of Compliance

In compliance with Local Law 1-2006, as amended (the "Law"), the Contractor hereby certifies the following:

- 1. The chief executive officer of the Contractor is:

_____ (Name)

_____ (Address)

_____ (Telephone Number)

- 2. The Contractor agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law. In the event that the contractor does not comply with the requirements of the Law or obtain a waiver of the requirements of the Law, and such contractor establishes to the satisfaction of the Department that at the time of execution of this agreement, it had a reasonable certainty that it would receive such waiver based on the Law and Rules pertaining to waivers, the County will agree to terminate the contract without imposing costs or seeking damages against the Contractor

- 3. In the past five years, Contractor _____ has _____ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against the Contractor, describe below:

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action _____ has _____ has not been commenced against or relating to the Contractor in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

5. Contractor agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

Dated

Signature of Chief Executive Officer

Name of Chief Executive Officer

Sworn to before me this
____ day of _____, 2008.

Notary Public

Doc #:
2297B
ShotSpotter, Inc. (DE)
copy: 4

APPENDIX A

SHOTSPOTTER, INC. GENERAL TERMS AND CONDITIONS OF SALE

ShotSpotter, Inc. (also "ShotSpotter," "we," "us," or "our") and Nassau County, named in the Agreement to which this exhibit is attached (also "Customer," "you" or "your") agree to the following General Terms and Conditions. The following Terms and Conditions are an essential part of the purchase order or Agreement under which you purchase a ShotSpotter Gunshot Location System ("ShotSpotter System"). Your installation, activation or use of any part of the ShotSpotter System (and/or signature on the purchase order and/or Agreement) shall constitute your representation that you have read these Terms and Conditions, and your acceptance of them as an integral part of the Agreement and your purchase or order of the ShotSpotter System. If you do not agree to be bound by these terms and conditions, do not install, activate or use any part of the ShotSpotter System and return all components in their original packaging to your supplier. In consideration of the parties' mutual undertakings set forth herein, you and we agree as follows:

1. LIMITED EXCLUSIVE WARRANTY. Provided that you comply with your obligations under the terms and conditions the warranties specified in the Agreement shall apply. During the applicable Warranty Period, we will, without cost to you, replace or repair any component of the ShotSpotter System Components or Software that are defective as to materials or workmanship.

The ShotSpotter System Components covered by this limited exclusive warranty consist exclusively of: (a) each static or portable acoustic sensor purchased by you; (b) a weather-resistant enclosure for each such sensor; each Mobile display device purchased by you (if any); (c) each central computer server, and/or ruggedized "base station" laptop computer purchased by you (if any), and associated network and radio base station hardware; (d) radio subscriber units and related antennas; (e) the network bridge, switch or mesh node supplied as part of the ShotSpotter system's communications infrastructure; (f) mounting, safety and grounding hardware provided for use with sensor installation or base station hardware; and (g) documentation concerning the use and operation of the ShotSpotter System (collectively, the "ShotSpotter System Components").

The Software covered under this limited exclusive warranty consists exclusively of: (i) object-code versions of (a) the firmware embedded in each ShotSpotter static or portable acoustic sensor and Mobile display device purchased by you (if any); (b) ShotSpotter Location Server software; ShotSpotter Notification Engine software; ShotSpotter Console software, and video surveillance application interfaces, installed and operated locally on computers and devices supplied by ShotSpotter for your use by on and in connection with a ShotSpotter System, subject to the terms and conditions of the ShotSpotter Software License Agreement ("License") between you and us; and (ii) software documentation and operations manuals supplied with the foregoing software (collectively, "Software").

Such ShotSpotter System Components and Software DO NOT INCLUDE (AND THIS LIMITED EXCLUSIVE WARRANTY DOES NOT COVER): installation, engineering or integration services not actually performed by ShotSpotter or its designee; any hardware, computer, equipment or software not actually supplied by ShotSpotter for your use in connection with a ShotSpotter System; power sources or power wiring, connections, wiring, switches, computer and telecommunications equipment and other facilities used to transmit event data from sensors to the computer on which is installed the Software, or to send event reports to terminal devices in the field (e.g., to officers' mobile computing devices or telephones); nor does it include third party network, power or communications equipment connected to ShotSpotter-supplied equipment, or related software or firmware.

THIS LIMITED EXCLUSIVE WARRANTY ALSO EXPRESSLY EXCLUDES ordinary wear and tear, damage caused by criminal activity, combat conditions, lightning, electrical surge, theft,

vandalism, fire, impact, or usage conditions, or any other loss or damage caused by events or circumstances outside our control after installation and/or delivery. This warranty DOES NOT include routine software support and maintenance for, or upgrades to the Software. Maintenance and support is provided pursuant to the separate Maintenance and Support Agreement between the parties.

This Limited Exclusive Warranty applies only to Customer or City and may not be assigned except as permitted in the Agreement. This Limited Exclusive Warranty does not apply to losses or damages to Products that occur in shipment to or from us. Further, this Limited Warranty shall not cover and losses or damage to the Products that we determine resulted from defective installation or operation of any ShotSpotter System Component or Software by you, or anyone other than ShotSpotter or its designee; failure to perform required preventative maintenance of Products such as tuning, level setting, or battery replacement; relocation, removal, disconnect, modification or alteration any component of the Products without first notifying and obtaining approval from us; operation by anyone other than competent and qualified personnel in accordance with any operating instructions furnished by us; or any use in any manner or for any purpose for which the Products are not designed or reasonably suited, any of which shall void this Limited Exclusive Warranty.

In fulfillment of this warranty, we reserve the rights to either repair or replace, at our sole discretion, any defective component, to substitute components of equal quality at the time of replacement or repair, and to use reconditioned components.

To initiate a warranty claim, you shall contact our Customer Service Department or the Customer Service Department of our authorized Integrator and request a Return Material Authorization (RMA) number, and return all defective Products to the address provided with the RMA number, with all insurance and freight charges prepaid by you. When returning any Product for warranty service, you also agree to provide us with information concerning the malfunction of the Product, your return mailing address, telephone number, name and location, and proof of the original date of shipment from ShotSpotter to you. We may replace the defective Product with a new or remanufactured, functionally equivalent Product at our option.

During the applicable Warranty Period, all labor and materials will be provided without charge to you. Products repaired or replaced by Seller under warranty will continue to be warranted according to the provisions of this Limited Warranty for the duration of the initial Warranty Period. Product returned and determined to be out of warranty will be repaired or replaced on a time and materials basis for parts and labor upon receipt of your Purchase Order for such services. Products returned during the warranty period and found not to be defective following inspection by us will be subject to our then-current evaluation charges. We will return the Products to Buyer after repair or replacement by the carrier and transportation method chosen by Seller on Seller's standard shipping terms.

2. IP Infringement; Exclusive Remedy

Subject to the terms and conditions hereof, ShotSpotter agrees to defend and indemnify Nassau County from and against losses, suits, damages, liability and expenses (including reasonable attorney and professional fees) arising out of a claim asserted in a lawsuit or action against the County by a third party unrelated to the you, in which such third party asserts a claim that the ShotSpotter System and/or Software, when used in accordance with ShotSpotter's specifications and for the purposes intended, directly infringes any valid and enforceable patent which was issued, or valid and enforceable copyright which was registered, as of the effective date of Customer's Agreement to purchase the ShotSpotter System.

Provided, however, that ShotSpotter shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that Customer shall provide ShotSpotter with reasonably

prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which Customer becomes aware that could reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide ShotSpotter all reasonable assistance and information in connection with ShotSpotter's investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and ShotSpotter shall have no obligation to defend and indemnify Customer to the extent the Customer or unauthorized third party modifies, alters, substitutes, or supplements any of the ShotSpotter System, ShotSpotter System Components or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not supplied by ShotSpotter as part of the ShotSpotter System or approved by ShotSpotter, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the ShotSpotter System Components or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in ShotSpotter's opinion, the System, or any ShotSpotter System Component or Software may or is likely to become the subject of such a suit or action, does become the subject of a claim asserted against a Customer in a lawsuit which ShotSpotter is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to ShotSpotter's obligations under this section, then ShotSpotter may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected component(s) or Software, (2) modify or replace such component(s) or Software to make it or them non-infringing, or (3) refund to the Customer the purchase price paid for the ShotSpotter System, less reasonable depreciation, without further liability to Customer or City, whereupon the Customer shall return the allegedly infringing ShotSpotter System components or Software to ShotSpotter.

THE FOREGOING SECTION STATES THE ENTIRE LIABILITY OF SHOTSPOTTER AND CUSTOMER'S AND CITY'S EXCLUSIVE REMEDY FOR OR RELATING TO INFRINGEMENT OR CLAIMS OR ALLEGATIONS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS IN OR TO THE SYSTEM, SYSTEM COMPONENTS, AND SOFTWARE. THIS SECTION IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT OF ANY AND ALL INTELLECTUAL PROPERTY RIGHTS.

3. LIMITED WARRANTIES EXCLUSIVE; DISCLAIMERS— IMPORTANT: READ CAREFULLY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTIES EXPRESSLY SET FORTH ABOVE ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY SET FORTH HEREIN, AND NO PRIOR STATEMENTS, REPRESENTATIONS, OR COURSE OF DEALING BY ANY SHOTSPOTTER REPRESENTATIVES SHALL EXPAND OR MODIFY THESE WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT

ARE HEREBY EXPRESSLY DISCLAIMED AND SUPERSEDED BY THE EXCLUSIVE LIMITED EXPRESS WARRANTY AND DISCLAIMERS SET FORTH HEREIN.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING LIMITATIONS AND DISCLAIMERS, WHILE THE SHOTSPOTTER SYSTEM IS NOT DESIGNED, SOLD, OR INTENDED TO BE USED TO DETECT, INTERCEPT, TRANSMIT OR RECORD ORAL COMMUNICATIONS OF ANY KIND, SHOTSPOTTER CANNOT CONTROL HOW THE SYSTEM AND ITS COMPONENTS ARE USED, AND, ACCORDINGLY SHOTSPOTTER DOES NOT WARRANT OR REPRESENT, EXPRESSLY OR IMPLICITLY, THAT USE OF THE SHOTSPOTTER SYSTEM WILL COMPLY OR CONFIRM TO THE REQUIREMENTS OF FEDERAL, STATE OR LOCAL STATUTES, ORDINANCES AND LAWS, OR THAT USE OF THE SYSTEM WILL NOT VIOLATE THE PRIVACY RIGHTS OF THIRD PARTIES. YOU SHALL BE SOLELY RESPONSIBLE FOR USING THE SYSTEM IN FULL COMPLIANCE WITH APPLICABLE LAW AND THE RIGHTS OF THIRD PARTIES.

FURTHER, REGARDLESS OF ANY PRIOR STATEMENTS, REPRESENTATIONS, OR COURSE OF DEALINGS BY ANY SHOTSPOTTER REPRESENTATIVES, WE DO NOT WARRANT OR REPRESENT, EXPRESSLY OR IMPLICITLY, THAT THE USE OF THE SHOTSPOTTER SYSTEM WILL RESULT IN THE PREVENTION OF CRIME OR HOSTILE ENEMY ACTION, APPREHENSION OR CONVICTION OF ANY PERPETRATOR OF ANY CRIME, MILITARY PROSECUTION OF ANY ENEMY FORCE, OR DETECTION OR NEUTRALIZATION OF ANY COMBATANT OR THREAT, NOR DO WE WARRANT OR REPRESENT THAT THE SYSTEM WILL PREVENT ANY LOSS, DEATH, INJURY, OR DAMAGE TO PROPERTY DUE TO THE DISCHARGE OF A FIREARM OR OTHER WEAPON, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES DETECT AND PLOT THE LOCATION OF ALL FIREARM DISCHARGES WITHIN THE DESIGNATED COVERAGE AREA, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES TRACK THE LOCATION OF FRIENDLY FORCES OR SHOTSPOTTER SENSORS, OR THAT THE SHOTSPOTTER-SUPPLIED NETWORK WILL REMAIN IN OPERATION AT ALL TIMES OR UNDER ALL CONDITIONS. ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF FITNESS FOR HIGH RISK PURPOSES REQUIRING FAIL-SAFE PERFORMANCE ARE HEREBY EXPRESSLY DISCLAIMED.

YOU AND WE EACH ACKNOWLEDGE AND AGREE THAT THE SHOTSPOTTER SYSTEM IS NOT A CONSUMER GOOD, AND IS NOT INTENDED FOR SALE TO OR USE BY OR FOR PERSONAL, FAMILY OR HOUSEHOLD USE. YOU WARRANT AND REPRESENT THAT YOU AND EACH USER OF THE SYSTEM ARE AND WILL BE GOVERNMENTAL, MILITARY, LAW ENFORCEMENT OR PUBLIC SAFETY AGENCIES. YOU ALSO ACKNOWLEDGE AND AGREE THAT YOUR AGENCY HAS ESTABLISHED SPECIFICATIONS FOR GOODS AND SERVICES OF THIS NATURE, AND THAT YOU HAVE, AFTER DUE DILIGENCE, DETERMINED THAT THE SHOTSPOTTER SYSTEM MEETS IN ALL MATERIAL RESPECTS YOUR AGENCY'S SPECIFICATIONS, AND THAT YOU ARE AWARE OF THE SYSTEM'S INTENDED USES AND LIMITATIONS.

4. YOUR OBLIGATIONS.

You acknowledge and agree that ShotSpotter's duties, including warranty obligations, and ability to perform its obligations to you shall be predicated and conditioned upon your timely performance of and compliance with your obligations hereunder, including, but not limited to:

A. You agree to pay all sums due under the purchase Agreement or order as and when they are due pursuant to the terms of such Agreement or order.

B. You agree to use your best efforts to timely perform and comply with your obligations set forth in the ShotSpotter Customer Requirements Document (including, without limitation, in the Implementation Plan and Timetable section thereof), supplied as requested, and made a part hereof.

ShotSpotter's duties, including warranty obligations to you shall be predicated and conditioned upon your timely performance of and compliance with your obligations set forth in that document.

C. You shall not permit any alteration, modification, substitution or supplementation of the ShotSpotter System, Software, or ShotSpotter System Component, or the combining, connection, merging, bundling, or integration of the ShotSpotter System, Software or ShotSpotter System Component into or with any other system, equipment, hardware, software, technology, function or capability, without our prior written consent.

D. You shall not change the installation site of any component of the ShotSpotter System without our prior written consent, after notice, which consent we will not unreasonably withhold.

E. You may not relocate, remove, disconnect, modify or in any way alter any component of the ShotSpotter System except mobile software without first notifying and obtaining approval from us.

F. If a ShotSpotter System Component, Software or ShotSpotter System appears to be defective, you must immediately inform us or our authorized integrator.

G. You are responsible for safeguarding ShotSpotter equipment from loss, damage or theft. We should be notified immediately regarding any actual or possible damage to, theft, unauthorized access to or copying of, or loss of any ShotSpotter System Component or Software.

H. You shall afford us secure (*i.e.* Virtual Private Network) access from your ShotSpotter System to our server over your existing Internet connection or over a dedicated link, at your sole cost and expense. You shall make your best efforts to ensure that this access is up at all times (24 x7 x 365) for the purposes of our monitoring the System.

I. You shall cause the ShotSpotter System to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us and in connection with the services provided under the Agreement or order. You shall not use the ShotSpotter System, or permit the ShotSpotter System to be used, in any manner or for any purpose for which the ShotSpotter System is not designed or reasonably suited.

J. We or our representatives may at reasonable times upon reasonable notice with your permission, enter your premises for purposes of inspecting, examining or repairing the ShotSpotter System. As to components installed on the property of others, you shall use your best efforts to obtain permission for us and our representatives to enter onto such property at any time for such purposes. We shall not be responsible for any delays or failures to inspect, examine and/or repair caused by our inability to gain entry to property for such purposes for any reason.

K. You shall comply with all applicable laws, rules and regulations relating to the goods and services provided hereunder.

5. INTELLECTUAL PROPERTY RIGHTS; LIMITED LICENSE. We or our licensors retain all ownership of all intellectual property rights in and to all software, computer programs, related documentation, technology, knowhow and processes embodied in or made available to you in connection with the ShotSpotter System, ShotSpotter System Components, and Software, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. Your rights to install and use software included with the ShotSpotter System ("Software") are limited, and shall be strictly in accordance with the **ShotSpotter System Software License Agreement** (which is supplied herewith, **and an essential part of the Agreement**). Any and all rights not granted expressly in such License are hereby reserved. For the terms and conditions of your limited license to Software and documentation, please refer to that document, which is incorporated by reference into these Terms and Conditions.

6. EXPORT CONTROL. You acknowledge and agree that no part of the Software, ShotSpotter System or any System Component thereof may be transferred, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the same or the underlying information or technology be disclosed, downloaded, transferred, furnished, or otherwise provided, to, by or through any person, government, country, or to any end-user, or for any end-uses, except in compliance with all applicable U.S. export control laws and regulations. You agree to comply with and are solely responsible for compliance, with all export laws and restrictions and regulations of any United States (U.S.) or foreign government, agency or authority, and agree not to export, re-export or engage in "deemed export," or to transfer or deliver, or to disclose or furnish, to any foreign (non-U.S.) government, foreign (non-U.S.) person or end-user, to any U.S. person or entity, any of the ShotSpotter System, System Components, Software, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations.

In addition to compliance with the foregoing, and without limiting the generality of the foregoing, you and your supplier shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any country embargoed or subject to U.S. trade sanctions covering the same, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries and are not subject to such sanctions; (b) any person or entity on the U.S. Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti-proliferation Entity List; (c) any person on the U.S. Department of State's List of Debarred Parties; (d) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (e) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

In addition, from time to time upon ShotSpotter's reasonable request, you will obtain and provide ShotSpotter with such information, documents and certifications executed by such persons, entities, or duly authorized officers or agents thereof, as ShotSpotter may request to verify your and your supplier's compliance with all applicable export control laws and regulations to which any ShotSpotter System, Software, or System Component or related service is or may be subject.

Notwithstanding any provision of this or any other agreement, ShotSpotter's obligation to fill any purchase order or to perform any service is and shall be expressly conditioned on ShotSpotter's determination to its sole satisfaction that any proposed export or re-export of, or furnishing of any information or any services relating to, any ShotSpotter System, Software, or System Component, is and will be in full compliance with all export control regulations, and ShotSpotter shall not be deemed in breach of its obligations to you or your supplier hereunder in the event ShotSpotter fails or refuses to fill any order because it is not so satisfied.

You represent and warrant that you have complied, and, at all times during your possession of any part of the ShotSpotter System, System Components, and Software, will comply, with these conditions.

7. PROTECTION OF CONFIDENTIAL INFORMATION. See Section 8 of the Agreement to which this is attached.

8. NOTICES. Any notice or other communication required or permitted to be given under this Agreement shall be in writing at such party's address or number or at such party's last known address or number. The parties' addresses may be changed by written notice to the other party as provided herein.

9. FORCE MAJEURE. In no event shall either party be liable for any delay or default in its performance of any obligation under this or any other agreement caused directly or indirectly by an act or omission of the other party or intended third party beneficiary, or persons acting under direction and/or control of such other party or intended third party beneficiary, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of power, telecommunications or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond the first party's reasonable control. Any of the foregoing causes shall be deemed to suspend such obligations of a party so long as any such cause shall prevent or delay performance.

11. LIMITATIONS ON LIABILITY

IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, ATTORNEYS, AGENTS, INSTALLERS, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SHOTSPOTTER'S CUMULATIVE LIABILITY FOR FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO THOSE ARISING OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF INSURANCE AVAILABLE TO COVER THE LOSS



APPENDIX B

SHOTSPOTTER® SYSTEM SOFTWARE LICENSE AGREEMENT

For purposes of this ShotSpotter Software License, "we," "us," "our," and similar terms means ShotSpotter, Inc., which is the licensor hereunder, and "you," "yours," and similar terms means Nassau County and authorized Nassau County Municipal Entities to which any of ShotSpotter's Software (as defined herein) or components are supplied by ShotSpotter under the Agreement to which this License Agreement is appended.

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For so long as you do not violate any of the terms of this License and other ShotSpotter terms and conditions, you may

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Each, and, collectively, all, of those firmware and software components (together with associated media, and printed materials and documentation supplied with such components), will be referred to as the "Software."

You may not install or use the Software installed on any sensor, server, workstation or computing device other than the Licensed

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You shall not, without our express written consent, which may be withheld or conditioned in our sole discretion: (i) modify, adapt, alter, translate, copy, perform or display (publicly or otherwise) or create compilations, derivative, new or other works based, in whole or in part, on the Software, in whole or in part, or the output data created or compiled by the Software and the System; (ii) merge, combine, integrate or bundle the Software, in whole or in part, or the output data created or compiled by the Software and the System, with other software, hardware, devices, systems, technologies, products, services, functions or capabilities; (iii) transfer, distribute, make available to third parties, sell, sublicense, lease, rent, or loan the Software, in whole or in part, or the output data created or compiled by the Software and the System; except for operation on Licensed Computers by other state and federal law enforcement agencies operating in Nassau County; (iv) provide the use of any of the Software or output data in or through any application service provider, service bureau, rental or time-sharing arrangement; (v) disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover, any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures, programming, routines, interoperability interfaces, drawings, or plans from the Software, or any data or information created, compiled or accessible through the System, in whole or in part; or (vi) remove, modify or obscure any identification or proprietary or restrictive rights markings or notices from the Software or any component thereof. ShotSpotter and its licensors retain all ownership of all intellectual property rights in and to all Software, all computer programs, related documentation, technology, knowhow and methods and processes embodied in or made available to you in connection with the System, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. All rights not expressly granted to you herein are

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You acknowledge and agree that the source code and internal structure of the Software, as well as documentation, operations manual and training material, are our confidential property, and trade secrets, the value of which would be destroyed by disclosure to the public. Use by anyone other than you of the Software, documentation, and output data created or compiled by the system, whether or not installed on a Licensed Computer, is prohibited, unless pursuant to a valid assignment under this Agreement. Unless otherwise permitted in the Agreement you may not sell, resell, sublicense, rent, lease, or otherwise transfer the Software, without the express, prior written permission of ShotSpotter, except for operation on Licensed Computers by other state and federal law enforcement agencies operating within Nassau County.

D. Maintenance, Support and Upgrades

Extended warranty coverage, maintenance, support and Software upgrades may be obtained from us under our then-current terms and conditions and fees for Annual Support and Maintenance. No maintenance or support services or upgrades are provided under this License, or the limited exclusive warranty herein.

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F. Export Control

You acknowledge and agree that no part of the Software, ShotSpotter System or any System Component thereof may be transferred, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the same or the underlying information or technology be disclosed, downloaded, transferred, furnished, or otherwise

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In addition to compliance with the foregoing, and without limiting the generality of the foregoing, you and your supplier shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any country embargoed or subject to U.S. trade sanctions covering the same, to individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries and are not subject to such sanctions; (b) any person or entity on the U.S. Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti-proliferation Entity List; (c) any person on the U.S. Department of State's List of Debarred Parties; (d) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (e) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

You represent and warrant that you have complied, and, at all times during your possession of any part of the ShotSpotter System, System Components, and Software, will comply, with these conditions.

G. Protection of Confidential Information

See Section 8 of the Agreement to which this Exhibit is attached.

H. Limited Exclusive Warranty

Subject to the provisions hereof, and provided that you comply with your obligations under the terms and conditions stated herein, for a period of one year (1 year) from the date the system is fully operational and accepted by the County as specified in the Agreement we warrant that the components and installation of the Software will be free of defects in materials and workmanship that materially impair the functioning of the associated ShotSpotter gunshot detection System in substantial conformity with the System specifications in ShotSpotter documentation. During such one (1) year period, we will, without cost to you, replace or repair any Software we determine to be defective as to materials or workmanship.

THIS LIMITED EXCLUSIVE WARRANTY EXCLUDES AND DOES NOT COVER power sources or power wiring, connections, wiring, switches, computer and telecommunications equipment and other facilities used to transmit event data from sensors to the computer on which is installed the Software, or to send event reports to terminal devices in the field (e.g., to officers' mobile computing devices or telephones); nor does it include third party network, power or communications equipment connected to ShotSpotter-supplied equipment, or related software or firmware. THIS LIMITED EXCLUSIVE WARRANTY ALSO EXPRESSLY EXCLUDES and DOES NOT COVER, damage caused by criminal activity, or

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SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE LIMITED WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY MADE TO YOU AND IS PROVIDED IN LIEU OF ANY OTHER

WARRANTIES (IF ANY) CREATED BY ANY DOCUMENTATION OR PACKAGING. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY BY JURISDICTION.

I. Termination

Termination of this License shall be in accordance with the provisions of the Master Services Agreement to which this is appended, provided that no prior notice and cure period shall be required in the event of breach or violation of ShotSpotter's intellectual property rights.

J. IP Infringement; Exclusive Remedy

Subject to the terms and conditions hereof, ShotSpotter agrees to defend and indemnify Nassau County from and against losses, suits, damages, liability and expenses (including reasonable attorney and professional fees) arising out of a claim asserted in a lawsuit or action against the County by a third party unrelated to the you, in which such third party asserts a claim that the ShotSpotter System and/or Software, when used in accordance with ShotSpotter's specifications and for the purposes intended, directly infringes any valid and enforceable patent which was issued, or valid and enforceable copyright which was registered, as of the effective date of Customer's Agreement to purchase the ShotSpotter System.

Provided, however, that ShotSpotter shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that Customer shall provide ShotSpotter with reasonably prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which Customer becomes aware that could

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reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide ShotSpotter all reasonable assistance and information in connection with ShotSpotter's investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and ShotSpotter shall have no obligation to defend and indemnify Customer to the extent the Customer or unauthorized third party modifies, alters, substitutes, or supplements any of the ShotSpotter System, ShotSpotter System Components or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not supplied by ShotSpotter as part of the ShotSpotter System or approved by ShotSpotter, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the ShotSpotter System Components or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in ShotSpotter's opinion, the System, or any ShotSpotter System Component or Software may or is likely to become the subject of such a suit or action, does become the subject of a claim asserted against a Customer in a lawsuit which ShotSpotter is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to ShotSpotter's obligations under this section, then ShotSpotter may in full and final satisfaction of any and all of its obligations under this

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FURTHER, REGARDLESS OF ANY PRIOR STATEMENTS, REPRESENTATIONS, OR COURSE OF DEALINGS BY ANY SHOTSPOTTER REPRESENTATIVES, WE DO NOT WARRANT OR REPRESENT, EXPRESSLY OR IMPLICITLY, THAT THE USE OF THE SHOTSPOTTER SYSTEM WILL RESULT IN THE PREVENTION OF

CRIME OR HOSTILE ENEMY ACTION, APPREHENSION OR CONVICTION OF ANY PERPETRATOR OF ANY CRIME, MILITARY PROSECUTION OF ANY ENEMY FORCE, OR DETECTION OR NEUTRALIZATION OF ANY COMBATANT OR THREAT, NOR DO WE WARRANT OR REPRESENT THAT THE SYSTEM WILL PREVENT ANY LOSS, DEATH, INJURY, OR DAMAGE TO PROPERTY DUE TO THE DISCHARGE OF A FIREARM OR OTHER WEAPON, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES DETECT AND PLOT THE LOCATION OF ALL FIREARM DISCHARGES WITHIN THE DESIGNATED COVERAGE AREA, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES TRACK THE LOCATION OF FRIENDLY FORCES OR SHOTSPOTTER SENSORS, OR THAT THE SHOTSPOTTER SUPPLIED NETWORK WILL REMAIN IN OPERATION AT ALL TIMES OR UNDER ALL CONDITIONS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF FITNESS FOR HIGH RISK PURPOSES REQUIRING FAIL-SAFE PERFORMANCE ARE HEREBY EXPRESSLY DISCLAIMED.

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US Patent Nos. 5,973,998; 6,847,587; 7,139,222, 7,266,045 and other foreign and domestic patents pending.

ShotSpotter Gunshot Location System is a registered trademark of, and ShotSpotter and the ShotSpotter logo are trademarks of ShotSpotter, Inc.

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SYSTEM'S INTENDED USES AND LIMITATIONS.

L. LIMITATIONS ON LIABILITY

IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, ATTORNEYS, AGENTS, INSTALLERS, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SHOTSPOTTER'S CUMULATIVE LIABILITY FOR FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO THOSE ARISING OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF INSURANCE AVAILABLE TO COVER THE LOSS

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APPENDIX C

SHOTSPOTTER MAINTENANCE AND SUPPORT AGREEMENT

This Maintenance and Support Agreement ("Agreement") is made and entered into effective as of _____, by and between ShotSpotter, Inc., a corporation having a place of business at 1060 Terra Bella Drive, Mountain View CA 94043 ("ShotSpotter," "we" or "us"), and Nassau County, a municipal corporation, having a place of business at 1550 Franklin Avenue, Mineola, NY 11501 ("County," "Customer" or "you").

WHEREAS: Customer has purchased a ShotSpotter Gunshot Detection and Location System, which includes certain software, hardware, and wireless networking components ("System") under the terms of a Service Agreement of which this Agreement is a part; and

WHEREAS: Customer wishes to engage ShotSpotter to provide certain maintenance and support services beyond the standard warranty terms and conditions applicable to the initial System purchase.

NOW, THEREFORE, Customer and ShotSpotter agree to the following terms and conditions:

1. TERM, RENEWAL, AND FEES

A. Term and Commencement The initial term of this Agreement will be for the three (3) year period commencing at the expiration of the one year initial limited warranty term set forth in the Master Services Agreement to which this Agreement is appended, and ending on the third year anniversary of the expiration of the initial term, provided that, the full amount of the fee specified in the Service Agreement has been paid. Receipt of payment constitutes acceptance of this Agreement.

B. Renewal The term may be renewed for five (5) successive periods of one (1) year each, and continuous warranty and support coverage shall be available, in accordance with the following procedures. Unless notice of non-renewal is given as provided herein, at least one hundred twenty (120) days prior to the expiration of the renewal term then in effect, ShotSpotter may offer renewal by sending Customer an invoice for the extended warranty fee then in effect, together with a statement of any changes to the terms and conditions of this Agreement, services, and service levels then in effect which will apply to the next renewal term. Customer may decline the renewal offer by sending ShotSpotter written notice of its intention not to renew, which notice must be received by ShotSpotter prior to the expiration of the term then in effect. If no such notice of nonrenewal is timely received, then ShotSpotter's renewal offer will be deemed accepted, and the term shall be renewed for another year. Customer acknowledges that ShotSpotter's renewal fees for the five (5) successive renewal terms contemplated herein are set forth in the Agreement to which this is appended, and that terms and conditions of this Agreement, and service levels hereunder, are subject to change from time to time, and that such fees, terms and conditions, and service levels may vary from those applicable to this Agreement in successive renewal terms.

C. Initial Term Fees The fees for the initial three year term are set forth in the Service Agreement to which this is appended.

2. SERVICES AND SERVICE LEVELS

During the term hereof, ShotSpotter agrees to provide the following services:

A. Telephone Support ShotSpotter shall make available by telephone a support specialist Monday through Friday, other than federal holidays, during the hours of 8:00 a.m. to 5:00 pm Pacific

Time. Voice mail messages may be left on other days and times, or if the support line is busy, and ShotSpotter shall return the messages on the next business day after they are received if received after hours, or on weekends and holidays, and within 4 hours the same day if received during business hours on weekdays other than holidays.

The telephone support specialist shall be responsible for receiving Customer reports of failures, errors or defects in System Components supplied by ShotSpotter, accessing the Customer's System remotely via Virtual Private Network, and, to the extent practicable over the telephone, making commercially-reasonable efforts to assist the Customer in resolving the Customer's reported problems. In the event the problem cannot be resolved telephonically, then ShotSpotter will use commercially-reasonable efforts to respond with a diagnosis of the problem within 24 hours of receipt of the report, and to restore functionality of the System to System specifications within 48hours of receipt of the report.

ShotSpotter shall provide email access to support from 8:00am to 11:00 am Eastern Time.

B. Support and Maintenance: During the term hereof, ShotSpotter warrants that the components of the ShotSpotter System Components and Software (as defined below) will be free of defects in materials and workmanship that materially impair the functioning of the System in substantial conformity with the System description in the ShotSpotter General Terms and Conditions supplied with the System. During the term, we will, without cost to you for such services or parts, replace or repair any component of the System determined to be defective as to materials or workmanship.

The ShotSpotter System Components covered by this agreement may consist of and include: (i) static or portable acoustic sensors; weather-resistant enclosures for sensors; mobile display devices; central computer servers, ruggedized "base station" laptop computers and associated network and radio base station hardware; radio subscriber units and related antennas; the network bridge, switch or mesh node supplied as part of the ShotSpotter System's communications infrastructure; mounting, safety and grounding hardware provided for use with sensor installation or base station hardware; and documentation concerning the use and operation of the ShotSpotter System (collectively, the "ShotSpotter System Components").

The Software covered under this agreement consists exclusively of: (i) object-code versions of (a) the firmware embedded in each ShotSpotter static or portable acoustic sensor and Mobile display device purchased by you (if any); (b) ShotSpotter Location Server software; ShotSpotter Notification Engine software; ShotSpotter Console software, installed and operated locally on computers and devices supplied by ShotSpotter for your use by on and in connection with a ShotSpotter System, subject to the terms and conditions of the ShotSpotter Software License Agreement ("License") between you and us; and (ii) software documentation and operations manuals supplied with the foregoing software. (collectively, "Software").

Such ShotSpotter System Components and Software DO NOT INCLUDE (AND THIS LIMITED EXTENDED WARRANTY DOES NOT COVER): installation, engineering, acceptance, testing, or integration services; any hardware, computer, equipment or software not actually supplied by ShotSpotter for your use in connection with a ShotSpotter System; power sources or power wiring, connections, wiring, switches, computer and telecommunications equipment and other facilities used to transmit event data from sensors to the computer on which is installed the Software, or to send event reports to terminal devices in the field (e.g., to officers' mobile computing devices or telephones); nor does it include third party network, power or communications equipment connected to ShotSpotter-supplied equipment, or related software or firmware.

THIS LIMITED EXCLUSIVE WARRANTY ALSO EXPRESSLY EXCLUDES and DOES NOT COVER, damage caused by criminal activity, or combat conditions, lightning, electrical surge, theft, vandalism, fire, impact, usage conditions, or any other loss or damage caused by events or circumstances outside our control after installation and/or delivery

Further, ShotSpotter shall have no obligations under this limited extended warranty to the extent that any defect or malfunction arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not supplied or approved by ShotSpotter as part of the ShotSpotter System, nor shall it apply to the extent that any defect or malfunction relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the ShotSpotter System Components or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

In fulfillment of this warranty, we reserve the rights to either repair or replace, at our sole discretion, any defective ShotSpotter System Component, to substitute components of equal or greater quality and functionality at the time of replacement or repair, and to use reconditioned components.

Any services outside the scope of this extended warranty shall be performed by ShotSpotter pursuant to the following rates: \$200 per hour, and shall be ordered by Customer pursuant to a duly-authorized invoice or purchase order.

C. Software Update and Upgrades Provided and on condition that the System hardware, networking technology and software, as installed, were in ShotSpotter's standard configuration, and have not been modified or customized after installation other than by ShotSpotter, then ShotSpotter will provide to the Customer updates and upgrades to the Customer's standard Software, if any, which ShotSpotter makes generally available to other customers purchasing support and maintenance for the particular System purchased by Customer, together with installation instructions. Such updates and upgrades may (but not necessarily shall) include new versions, new functionality and features, security enhancements, and bug fixes. Such Software updates and upgrades shall not include any customization or non-standard enhancements, or third party operating system, database and other third party software.

Customer's rights to install and use System Software updates and upgrades are limited, and shall be strictly in accordance with the ShotSpotter System Software License supplied with the System (which is an essential part of this Agreement). Any and all rights not granted expressly in such License are hereby reserved. For the terms and conditions of your limited license to Software and documentation, and updates and upgrades, supplied under this Agreement please refer to that document, which is incorporated by reference into this Agreement.

D. Training ShotSpotter, at the specific request of the Customer, will provide two (2) onsite training events per year (if then current year's Agreement is current) for up to one week, provided that Customer agrees to pay ShotSpotter's training personnel's travel expenses for the second event. Training shall consist of, but not be limited to, retraining existing certified operators and new operators of the system including Dispatch, Patrol, Forensics and Crime Analysts.

E. Expert Witness Services ShotSpotter, at the specific request of the Customer, will provide qualified individual(s) for the purposes of expert witness testimony for any incident which the ShotSpotter System locates an incident and the incident information is deemed by the Customer to be valuable to the Customer's prosecutorial requirements. ShotSpotter requires at least three week notice of such a requirement in writing from the Customer. Customer must include dates, times, specific locations and a point of contact for ShotSpotter personnel. Customer agrees to reimburse ShotSpotter within thirty (30) days after the date of ShotSpotter's invoice up to \$200 per day for lodging and \$50 per day for meals, not to exceed \$250 per person per day. This benefit shall only be available to Customer if Customer is fully current with their maintenance payments, and if Customer is not current with their maintenance payments, then Customer may become current under the terms and conditions set forth herein. In the case that Customer is not current with their maintenance payments, then an expert witness shall NOT be assigned until Customer becomes current with their maintenance.

F. **Forensic Reports** ShotSpotter, at the specific request of the Customer, will provide a total of eight (8) detailed incident reports for any incident which the ShotSpotter System stores incident information if such information is deemed by the Customer to be valuable to the Customer's prosecutorial requirements. Such reports must be requested 72 hours in advance in writing to the assigned ShotSpotter project manager. Customer should expect delivery of these reports within 3 business days after receipt of the request. Additional reports are available within 72 hours of the receipt of an approved purchase order in the amount of \$600 (Six Hundred Dollars) per additional report. This benefit shall only be available to Customer if Customer is fully current with their maintenance payments, and if Customer is not current with their maintenance payments, then Customer may become current under the terms and conditions set forth herein. In the case that Customer is not current with their maintenance payments, then forensic reports shall NOT be generated nor provided to Customer until Customer becomes current with their maintenance.

3. CUSTOMER'S OBLIGATIONS

Customer agrees to perform, and ShotSpotter's obligations to provide the foregoing support and maintenance services are conditioned and dependent upon the Customer's timely and strict performance of, the following obligations:

A. Customer shall pay ShotSpotter pursuant to the payment terms sent forth in Section 3 of the Master Agreement all sums due under the Agreement as and when they are due.

B. To the extent that any System components are to be installed or used in premises or locations not owned by Customer, Customer is solely responsible for obtaining (at its sole expense) any permissions, permits, licenses, or leases necessary for ShotSpotter to access, remove, repair, replace or install such component on such premises and/or locations. Customer is also solely responsible for obtaining permission for continuing access to such locations and premises by ShotSpotter personnel and contractors, for so long as the components remain in such location.

C. Any demolition, restoration, or alteration of property required for repair, removal, replacement, or installation of ShotSpotter equipment will not be covered by the extended warranty, and will be done at your sole risk and expense, at ShotSpotter's then prevailing terms and labor rates for such work, if done by ShotSpotter personnel or contractors. Customer is also solely responsible for obtaining (at its sole expense) all legally required governmental permits and/or licenses for all support, maintenance, and warranty work on the System and all components thereof.

D. Customer shall not alter, modify, repair, augment, enhance, replace, substitute, disconnect, use in connection with any third party product, or relocate, or allow any alteration, modification, repair, augmentation, enhancement, replacement, substitution, modification, disconnection, deinstallation, integration, bundling, combination, use in connection with third party products, or relocation of any component of the System, without ShotSpotter's prior written consent. Only ShotSpotter personnel or contractors may alter, modify, repair, augment, enhance, replace, substitute, disconnect, deinstall, or use in connection with third party products, System components and software.

E. If a component or System appears to be defective, Customer must inform ShotSpotter or its authorized Integrator as soon as reasonably possible.

F. . Customer is responsible for safeguarding and insuring System equipment and software from and against loss, damage or theft. Customer should notify ShotSpotter immediately regarding any damage to or loss of equipment or damage to software, but losses or damage due to theft, vandalism or criminal acts are not covered under the extended warranty.

G. Customer, in the event that a Metro (fixed) System is purchased, shall afford ShotSpotter secure (*i.e.* Virtual Private Network) access from your ShotSpotter System to ShotSpotter's server over Customer's existing Internet connection or over a dedicated link, at Customer's sole cost and expense. Customer shall use best efforts to ensure that this access is up at all times, (24 x7 x 365), for the purposes of ShotSpotter's monitoring and supporting the System. Customer may also, from

time to time and with prior coordination with ShotSpotter, be required to provide the same connection on a temporary basis to the RDS base computer for the purposes of updating or maintaining the software

H. Customer shall cause the System to be operated by competent and qualified personnel in accordance with any operating instructions furnished by us and in connection with the services provided under this Agreement. Customer shall not use the System, or permit the System to be used, in any manner or for any purpose for which the System is not designed or reasonably suited.

I. ShotSpotter or its representatives may, at reasonable times and upon reasonable notice with your permission, enter Customer's premises for purposes of inspecting, examining or repairing the System. As to components installed on the property of others, Customer shall use its best efforts to obtain permission for ShotSpotter and its representatives to enter onto such property at any time for such purposes. ShotSpotter shall not be responsible for any delays or failures to inspect, examine and/or repair caused by its inability to gain entry to property for such purposes for any reason.

J. Customer shall comply with all applicable laws, rules and regulations relating to the goods and services provided hereunder.

4. IP INFRINGEMENT; EXCLUSIVE REMEDY

Subject to the terms and conditions hereof, ShotSpotter agrees to defend and indemnify Customer and or City from and against losses, suits, damages, liability and expenses (including reasonable attorney and professional fees) arising out of a claim asserted in a lawsuit or action against the Customer or City by a third party unrelated to the Customer, in which such third party asserts a claim that the ShotSpotter System and/or Software, when used in accordance with ShotSpotter's specifications and for the purposes intended, directly infringes any valid and enforceable patent which was issued, or valid and enforceable copyright which was registered, as of the effective date of Customer's agreement to purchase the ShotSpotter System.

Provided, however, that ShotSpotter shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that Customer shall provide ShotSpotter with reasonably prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which Customer becomes aware that could reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide ShotSpotter all reasonable assistance and information in connection with ShotSpotter's investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and ShotSpotter shall have no obligation to defend and indemnify Customer to the extent the Customer or unauthorized third party modifies, alters, substitutes, or supplements any of the ShotSpotter System, ShotSpotter System Components or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not supplied by ShotSpotter as part of the ShotSpotter System or approved by ShotSpotter, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the ShotSpotter System Components or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in ShotSpotter's opinion, the System, or any ShotSpotter System Component or Software may, or is likely to become the subject of such a suit or action, does become the subject of a claim asserted against a Customer in a lawsuit which ShotSpotter is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-

appealable judgment subject to ShotSpotter's obligations under this section, then ShotSpotter may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected component(s) or Software, (2) modify or replace such component(s) or Software to make it or them non-infringing, or (3) refund to the Customer the purchase price paid for the ShotSpotter System, less reasonable depreciation, without further liability to Customer and or City, whereupon the Customer shall return the allegedly infringing ShotSpotter System components or Software to ShotSpotter.

THE FOREGOING SECTION STATES THE ENTIRE LIABILITY OF SHOTSPOTTER AND CUSTOMER'S AND CITY'S EXCLUSIVE REMEDY FOR OR RELATING TO INFRINGEMENT OR CLAIMS OR ALLEGATIONS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS IN OR TO THE SYSTEM, SYSTEM COMPONENTS, AND SOFTWARE. THIS SECTION IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT OF ANY AND ALL INTELLECTUAL PROPERTY RIGHTS.

5. LIMITED WARRANTIES EXCLUSIVE; DISCLAIMERS— IMPORTANT: READ CAREFULLY — TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITED WARRANTIES EXPRESSLY SET FORTH ABOVE ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY SET FORTH HEREIN, AND NO PRIOR STATEMENTS, REPRESENTATIONS, OR COURSE OF DEALING BY ANY SHOTSPOTTER REPRESENTATIVES SHALL EXPAND OR MODIFY THESE WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE HEREBY EXPRESSLY DISCLAIMED AND SUPERSEDED BY THE EXCLUSIVE LIMITED EXPRESS WARRANTY AND DISCLAIMERS SET FORTH HEREIN.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING LIMITATIONS AND DISCLAIMERS, WHILE THE SHOTSPOTTER SYSTEM IS NOT DESIGNED, SOLD, OR INTENDED TO BE USED TO DETECT, INTERCEPT, TRANSMIT OR RECORD ORAL COMMUNICATIONS OF ANY KIND, SHOTSPOTTER CANNOT CONTROL HOW THE SYSTEM AND ITS COMPONENTS ARE USED, AND, ACCORDINGLY, SHOTSPOTTER DOES NOT WARRANT OR REPRESENT, EXPRESSLY OR IMPLICITLY, THAT USE OF THE SHOTSPOTTER SYSTEM WILL COMPLY OR CONFIRM TO THE REQUIREMENTS OF FEDERAL, STATE OR LOCAL STATUTES, ORDINANCES AND LAWS, OR THAT USE OF THE SYSTEM WILL NOT VIOLATE THE PRIVACY RIGHTS OF THIRD PARTIES. YOU SHALL.

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FURTHER, REGARDLESS OF ANY PRIOR STATEMENTS, REPRESENTATIONS, OR COURSE OF DEALINGS BY ANY SHOTSPOTTER REPRESENTATIVES, WE DO NOT WARRANT OR REPRESENT, EXPRESSLY OR IMPLICITLY, THAT THE USE OF THE SHOTSPOTTER SYSTEM WILL RESULT IN THE PREVENTION OF CRIME OR HOSTILE ENEMY ACTION, APPREHENSION OR CONVICTION OF ANY PERPETRATOR OF ANY CRIME, MILITARY PROSECUTION OF ANY ENEMY FORCE, OR DETECTION OR NEUTRALIZATION OF ANY COMBATANT OR THREAT, NOR DO WE WARRANT OR REPRESENT THAT THE SYSTEM WILL PREVENT ANY LOSS, DEATH, INJURY, OR DAMAGE TO PROPERTY DUE TO THE DISCHARGE OF A FIREARM OR OTHER WEAPON, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES DETECT AND PLOT THE LOCATION OF ALL FIREARM DISCHARGES WITHIN THE DESIGNATED COVERAGE AREA, OR THAT THE SHOTSPOTTER SYSTEM WILL IN ALL CASES TRACK THE LOCATION OF FRIENDLY FORCES OR SHOTSPOTTER SENSORS, OR THAT THE SHOTSPOTTER SUPPLIED NETWORK WILL REMAIN IN OPERATION AT ALL TIMES OR UNDER ALL CONDITIONS. ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF FITNESS FOR HIGH RISK PURPOSES REQUIRING FAIL-SAFE PERFORMANCE ARE HEREBY EXPRESSLY DISCLAIMED.

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6. **TERMINATION** Termination shall be in accordance with the Master Services Agreement to which this agreement is appended.

7. **PROTECTION OF CONFIDENTIAL INFORMATION**. See Section 8 of the Master Services Agreement to which this is appended.

8. **NOTICES** Any notice or other communication required or permitted to be given under this Agreement shall be in writing at such party's address or number or at such party's last known address

or number. The parties' addresses may be changed by written notice to the other party as provided herein.

9. FORCE MAJEURE. In no event shall either party be liable for any delay or default in its performance of any obligation under this or any other agreement caused directly or indirectly by an act or omission of the other party or intended third party beneficiary, or persons acting under direction and/or control of such other party or intended third party beneficiary, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of power, telecommunications or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond the first party's reasonable control. Any of the foregoing causes shall be deemed to suspend such obligations of a party so long as any such cause shall prevent or delay performance.

11. LIMITATIONS ON LIABILITY

IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, ATTORNEYS, AGENTS, INSTALLERS, OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL THEORY FOR LOST PROFITS, LOST REVENUES, LOST BUSINESS OPPORTUNITIES, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER ANY PARTY OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SHOTSPOTTER'S CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS, CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO THOSE ARISING OF OR RELATED TO THIS AGREEMENT) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE AMOUNT OF INSURANCE AVAILABLE TO COVER THE LOSS.