

PERFORMA SOFTWARE-AS-A-SERVICE AGREEMENT

THIS PERFORMA SOFTWARE-AS-A-SERVICE AGREEMENT (together with all attachments hereto, the “Agreement”), is made effective as of July 1, 2023 (the “**Effective Date**”) and supersedes any previous agreements regarding PERFORMA SOFTWARE-AS-A-SERVICE, by and between PERFORMA LABS, INC., a Delaware corporation having its principal place of business at 19600 Fairchild Rd, Suite 300, Irvine, CA 92612 (“**PERFORMA**”) and the City of Garden Grove, a municipal corporation, by and through the Garden Grove Police Department, a municipal police department having its principal place of business at 11301 Acacia Pkwy, Garden Grove, CA 92840 (“**Client**”).

Recitals

WHEREAS, PERFORMA's App (as defined below) and proprietary training material provide to California peace officers self-study training that is approved and certified by the California Commission on Peace Officer Standards and Training (“**POST**”);

WHEREAS, the California state legislature requires California peace officers to complete certain POST-certified training courses during each POST Mandate Cycle (as defined below) (completion of each such training course, “**POST Credit**”);

WHEREAS, the App allows law enforcement agencies to train peace officers using realistic scenarios based on actual body worn camera footage, allows App users flexibility to complete training at their convenience and in accordance with an agency’s policy, schedule, and allows agencies to monitor the progress and completion of training; and

WHEREAS, Client desires to utilize the App in conjunction with in-person and other training programs to comply with POST requirements, to simplify and decrease the effort, time, and cost of training, and to increase the efficacy of Client’s training program.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PERFORMA and Client agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized terms have the meanings set forth below:

“**Admin Console**” is a function provided in connection with the App to allow designated Client Admin(s) to access Admin Reports electronically.

“**Admin Report**” means data provided in electronic form created and compiled by PERFORMA for Client Admin(s) concerning the progress and completion of Modules by Users.

“**Anonymized Data**” means electronic data or information compiled or derived by PERFORMA based on User Data that has been deidentified, aggregated or anonymized such that it cannot reasonably be linked to Client or a particular User.

“**App**” means the iOS and Android mobile application that PERFORMA provides to Client Admins and Users to access the Service.

“**Client Admins**” means the persons employed by Client who shall be PERFORMA’s primary points of contact regarding the Service. Client shall have at least one designated Client Admin. Each Client Admin shall have access to Admin Reports.

“**Module**” means a proprietary self-study training module consisting of four (4) Training Courses available to authorized Users through the App.

“**POST Mandate Cycle**” means each two-year training period established by the California state legislature during which peace officers shall complete certain POST-certified training content for POST Credit, if applicable. A POST Mandate Cycle runs from January 1, 2021 through December 31, 2022; January 1, 2023 through December 31, 2024; and so on and so forth every two (2) calendar years thereafter.

“**Seat**” means access to the Service via the App by a single unique User for the completion of one (1) Training Course or Module (as set forth on Attachment A), and such Training Course’s or Module’s associated POST Credit, if applicable, during the Subscription Term or Renewal Term then in effect.

“Service” means providing (i) those Training Courses and Modules set forth on Attachment A to Users via the App and (ii) Admin Reports to Client Admins via the App or electronically. The Service includes PERFORMA’s storing, hosting, managing, maintaining, and supporting the Software, App, and Admin Console.

“Service Fees” means the total fees charged for all Seats purchased during the Term of this Agreement.

“Software” means PERFORMA’s proprietary software (including algorithms and domain expertise) and associated third-party software used by PERFORMA to provide the Service.

“Subscription Term” means the period during which PERFORMA shall make the Software available for use by Users as set forth on Attachment A.

“Term of this Agreement” means the period commencing on the Effective Date and terminating upon termination of this Agreement. The Term of this Agreement shall include the Subscription Term together with all Renewal Terms (as defined below), if any.

“Training Course” means a single training course completed by a User during the Subscription Term or Renewal Term then in effect.

“Users” means those Client personnel authorized to use the App and the Service.

“User Data” means all electronic data or information submitted by Client and Users to the Service, as well as any electronic data or information generated or recorded by Performa concerning Client or Users’ use of the Service.

2. Provision of the Service. PERFORMA shall make the Service available to Client and Users during the Subscription Term pursuant to the terms and conditions set forth in this Agreement.

3. Use of the Service.

3.1 POST Reporting. When a User completes or passes a Training Course or Module eligible for POST Credit, Client authorizes PERFORMA to report to POST the name of the User and the results of the Training Course or Module.

3.2 Client Responsibilities.

3.2.1 Client Admins. Client shall notify PERFORMA in writing of the name, title, telephone number, and email address of each of its Client Admins. Client shall keep this information up to date during the Term of this Agreement. Client shall have at least one designated Client Admin at all times during the Term of this Agreement.

3.2.2 User Eligibility and Conduct. Client shall provide the names and email addresses (departmental or Client web domain email addresses only) of those persons who shall be Users of the Service. Client shall submit User information in an electronic format provided or specified by PERFORMA.

3.2.1.1 Client is responsible for determining the eligibility of persons who it designates as Users under this Agreement. Users shall be employees of Client and at least 18 years of age.

3.2.1.2 Client shall be liable for any conduct or actions of its Users that violates this Agreement.

3.2.1.3 Client shall notify PERFORMA within five (5) days of any User who is no longer eligible or authorized to be a User, including but not limited to ineligibility by reason of termination of employment with Client.

3.2.2 Client Policies. Client shall establish a training schedule and policies governing its Users' use of the Service, which policies shall not conflict with the terms set forth in this Agreement. As between Client and PERFORMA, Client shall be solely responsible for scheduling permitted times that Users may access the Service and ensuring that its Users complete all training in a timely manner (*e.g.*, prior to the termination of a POST Mandate Cycle, the Subscription Term, or a Renewal Term, as applicable).

3.3 Usage Guidelines.

3.3.1 Permitted Use. Client and Users shall use the Service solely for training Users and monitoring Users' training progress through the Admin Console as contemplated by this Agreement.

3.3.2 License Grant and Restrictions.

3.3.2.1 PERFORMA hereby grants a license to one (1) Seat to each User of the Service. Once a Seat is assigned to a User, (i) the User shall create a User ID and password, (ii) such Seat license may not be transferred to another User. Access to that Seat and its related training content, and the license granted thereto, shall automatically terminate upon the earlier of (A) the termination of the Subscription Term or Renewal Term then in effect, and (B) the date such User is no longer permitted to access the Service, including as a result of Client's termination of User's employment.

3.3.2.2 Upon commencement of a Renewal Term, each User shall be granted a new license to one (1) Seat to access the Service, complete the associated Training Course or Module (as set forth on Attachment A), and obtain associated POST Credit, if applicable; provided that Client shall remit to PERFORMA Service Fees for each Seat during the Renewal Term in accordance with Section 4.1.

3.3.3 Additional Seat Purchases. Client may, from time to time during the Term of this Agreement, elect to assign Seats in excess of that number of Seats purchased on Attachment A to Users through the Admin Console (such Seats, the "**Additional Seats**"). Each Additional Seat assigned to a User shall be subject to PERFORMA's prices then-prevailing rates and Client shall remit payment for all such Additional Seats upon receipt of PERFORMA's invoice therefor in accordance with

Section 4. Users of Additional Seats shall be subject to those terms and conditions set forth herein that are applicable to Seats.

3.3.4 Prohibited Uses.

3.3.4.1 Client, Client Admins, and Users shall not copy, reverse engineer, license, sublicense, sell, resell, rent, transfer, lease, assign, distribute, time share, or otherwise commercially exploit or make the Service, App, Admin Console, and Modules available to any third party. Without limiting the generality of the foregoing, Users and Client Admins may not take screenshots or screen captures or any other reproduction of the App or Modules.

3.3.4.2 Client, Client Admin(s), and Users shall not attempt to gain unauthorized access to the Service, App Modules, Admin Console, and related systems or networks.

3.3.4.3 Client, Client Admin(s), and Users shall not share their login information to access the App, including User IDs and passwords, with any other persons or display any content of the Modules to any other persons.

3.3.5 Compliance with Guidelines. Client shall be responsible for ensuring that all Client Admins and Users comply with the use guidelines set forth in this Section 3.3, as well as any additional reasonable guidelines and policies established by Client for their personnel regarding use of the App and Service as communicated to PERFORMA by Client from time to time during the Term of this Agreement. PERFORMA reserves the right to block access to the Service by any person who violates the terms of this Agreement or otherwise interferes with PERFORMA's ability to provide the Service to any Client, Client Admin, or User.

3.3.6 Accessing the App. Client, Client Admins, and Users shall download the App using a private link provided by PERFORMA. Client, Client Admins,

and Users shall provide their own Internet service and mobile devices operating on either iOS or Android operating systems. No other operating systems are supported at this time. The Service is not available through a web browser.

3.3.7 Supported Software. PERFORMA supports use of the App only on devices using the most current version of the iOS or Android operating systems and the prior two versions of such operating systems. New releases of the iOS or Android operating systems may not be supported for up to three months after their public release.

4. **Service Fees and Payments.**

4.1 Minimum Purchase. Client shall pay in advance the Service Fees specified in Attachment A based on the number of Seats purchased by Client. Client shall purchase one (1) Seat during the Subscription Term and each Renewal Term, if applicable, for each of Client's sworn peace officers and peace officer trainees or cadets. Client may purchase additional Seats for anticipated hiring during the Term of this Agreement.

4.2 Refunds. Service Fees are not refundable in whole or in part in the event that Users do not use, complete, or pass the Training Course or Module for which the Seat was purchased.

4.3 Invoicing & Payment. The Service Fees shall be invoiced by PERFORMA as set forth on Attachment A. Payments are due within 30 days of Client's receipt of the invoice. Any invoices unpaid after 30 days will be subject to interest at the rate of ten percent (10%) per annum.

4.4 Automatic Renewal. After expiration of the Subscription Term, this Agreement shall automatically renew for additional one (1)-year terms (each, a "**Renewal Term**"), unless Client delivers to PERFORMA written notice of termination at least thirty (30) days prior to the end of the then-current term. Client shall advise PERFORMA of changes to the aggregate number of Client's sworn peace officers and/or peace officer trainees or cadets employed by Client upon commencement

of the Renewal Term and the information set forth in Section 3.2.2 so that each such person may have access to the App extended or removed as an authorized User.

- 4.5 Service Fee Adjustments.** Service Fees shall adjust upon commencement of each Renewal Term to reflect PERFORMA's then-prevailing rates. In addition, from time to time during the Term of this Agreement PERFORMA may adjust its Service Fees for all Seats purchased after the effective date of such adjustment upon written notice to Client.
- 4.6 Multi-Year Discount.** Notwithstanding the terms set forth in Section 4.5, in the event PERFORMA has agreed to a multi-year Service Fee discount in exchange for Client's agreement to commit to a Term of this Agreement in excess of one (1) year (a "**Multi-Year Discount**"), such Multi-Year Discount shall remain in effect and any Service Fee price adjustments shall not take effect until the term for which such Multi-Year Discount applies terminates (the "**Multi-Year Discount Term**"). The Multi-Year Discount and Multi-Year Discount Term, if any, shall be set forth in Attachment A. If Client terminates this Agreement pursuant to Section 9.1 prior to termination of the Multi-Year Discount Term, PERFORMA shall be entitled to receive a true-up amount equal to the difference between (i) the Service Fees PERFORMA would have earned (including as a result of any price adjustments) had the Multi-Year Discount not been in effect, and (ii) the Service Fees subject to the Multi-Year Discount.
- 4.7 Suspension of Service.** If the Service Fees (except fees then subject to Client's good faith dispute) are 45 days or more overdue, then, in addition to any of its other rights or remedies, PERFORMA may suspend Client's access to the Service, without liability to Client, until all such amounts are paid in full.
- 4.8 Taxes.** Unless otherwise stated, PERFORMA's fees do not include any local, state, federal, or foreign taxes, levies or duties of any nature ("**Taxes**"). Client is responsible for paying all Taxes, excluding taxes based only on PERFORMA's income. If PERFORMA has the legal obligation to collect or remit Taxes for which

Client is responsible under this section, the amount of such Taxes shall be invoiced to and paid by Client unless Client provides PERFORMA with a valid Tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights.

5.1 Reservations of Rights. Client acknowledges that in providing the Service, PERFORMA utilizes (i) the PERFORMA name, the PERFORMA logo, the PERFORMA-LABS.com domain name, the product and service names associated with the Service, and other registered or unregistered trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how, and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, “**PERFORMA Technology**”) and that the PERFORMA Technology is covered by intellectual property rights owned or licensed by PERFORMA (collectively, “**PERFORMA IP Rights**”). Other than as expressly set forth in this Agreement, no license or other rights in or to the PERFORMA Technology or PERFORMA IP Rights are granted to Client, Client Admins, or Users, and all such licenses and rights are and shall remain with PERFORMA and its licensors and are hereby expressly reserved.

5.2 License Grant. PERFORMA grants Client and its Users a worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the App and Software hosted by PERFORMA in connection with PERFORMA’s provision of the Service in accordance with the terms of this Agreement.

5.3 Restrictions. Client and Users shall not (i) modify, copy, or create derivative works based on the Service or the PERFORMA Technology; (ii) create Internet “links” to or from the Service, or “frame” or “mirror” any content forming part of the Service; (iii) bypass or breach any security device or protection used by the Service or access or use the Service other than by a User through the use of his or her own then-valid access credentials; (iv) remove, delete, alter, or obscure any

trademarks, specifications, documentation, end-user license agreement, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Service; or (v) disassemble, reverse engineer, decode, or decompile the Service or PERFORMA Technology, or otherwise attempt to derive or gain access to it, for any reason whatsoever, including to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service. Client, Client Admins, and Users may not create, store, or disseminate screenshots or capture screen images from the App, Module(s), or Admin Console.

5.4 Suggestions. PERFORMA shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or its Users relating to the operation of the Service.

5.5 User Data and Anonymized Data. Client Admin(s) and User(s) may access electronically certain User Data and Anonymized Data that PERFORMA derives therefrom. The parties agree that all such User Data and Anonymized Data are the exclusive property of PERFORMA; *provided, however,* that PERFORMA shall maintain the confidentiality of all User Data and shall not disclose User Data to any third party without the written consent of Client unless required to do so in response to a subpoena, discovery request, document request, Public Records Act request, or any other valid court order, or as otherwise required by applicable law or regulation.

5.6 Compelled Disclosure. In the event PERFORMA is required by law, regulation, or a valid and effective subpoena or order issued by a court of competent jurisdiction to disclose User Data or any other information (with the exception of Anonymized Data) related to this Agreement (any such request, a “**Compelled Disclosure**”), PERFORMA shall promptly notify Client in writing of the existence, terms and circumstances surrounding such Compelled Disclosure so that Client may take any

measures, at Client's expense, that it deems appropriate to oppose or respond to the request. At Client's request, PERFORMA shall provide all cooperation and assistance as may reasonably be requested by Client in responding to the Compelled Disclosure, or seeking a protective order or other appropriate remedy to prevent or limit the scope of any such Compelled Disclosure. Client shall promptly reimburse PERFORMA for all costs or expenses of whatever kind, including personnel-related costs, reasonable attorneys' fees, court costs and expenses, and court sanctions or penalties, incurred by PERFORMA in responding to any Compelled Disclosure.

6. Warranties, Limitations, and Disclaimers.

6.1 PERFORMA Warranty. PERFORMA warrants that it will provide the Service in a manner substantially consistent with this Agreement and any documentation provided by PERFORMA in connection with the Service.

6.2 Sole Remedy for PERFORMA Warranty. In the event that PERFORMA provides the Service on the terms set forth in this Agreement in a manner that significantly affects the use of the Service, the App, or Admin Console and Client so notifies PERFORMA with a written report of such failure via email to customerservice@performa-labs.com, PERFORMA's sole obligation shall be to use commercially reasonable efforts to correct such failure promptly.

6.3 Limitations. Although PERFORMA has used its diligent efforts to ensure the accuracy, completeness, timeliness, and accessibility of the Service, Module(s), App, and Admin Console, Client agrees that neither PERFORMA nor PERFORMA's third-party software or service providers shall have any liability whatsoever for the accuracy, completeness, timeliness, or accessibility of the Service, Module(s), App, and Admin Console, or for any decision made or action taken by Client or Users in reliance upon information or data conveyed through the Service, Module(s), App, and Admin Console, or for interruption of any aspect of the Service, Module(s), App, and Client Console. Client agrees and acknowledges that PERFORMA shall in no event be held responsible for any problems with the

Service, Module(s), App or Admin Console attributable to the public or private Internet infrastructure or Client's and Users' ability to connect to the Internet.

6.4 Authorization. PERFORMA is either (i) the owner of the Software, App, Admin Console, and Module(s) or (ii) authorized to provide the Service pursuant to the terms of this Agreement, and has sufficient right, title, and interest in the Software, App, Admin Console, and Module(s) to grant the license contemplated by this Agreement, and (iii) PERFORMA is not currently engaged in any litigation or legal proceeding of any kind, the subject of which is the Service, Software, App, Admin Console, and Module(s); and to the knowledge of PERFORMA, no legal action pertaining in any manner to the Service, Software, App, Admin Console, and Module(s) is threatened.

6.5 Open-Source Software. The Service, Software, and App do not make use of Open-Source Software in any way that would otherwise make the Service, Software, or App Open-Source Software.

6.6 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, THE SERVICES ARE PROVIDED BY PERFORMA AND ITS THIRD-PARTY SOFTWARE AND SERVICE PROVIDERS WITH NO WARRANTIES OF ANY KIND EXCEPT THOSE EXPRESSLY SET FORTH IN THIS SECTION 6, AND PERFORMA AND ITS THIRD-PARTY SOFTWARE AND SERVICE PROVIDERS HEREBY DISCLAIM ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PERFORMA DOES NOT WARRANT THAT THE SERVICE, MODULE(S), APP, AND ADMIN CONSOLE WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE.

7. Limitation of Liability.

7.1 Limitation of Action. Except for actions for non-payment or breach of intellectual property rights, no action (regardless of form) arising out of this Agreement may

be commenced by either party more than two (2) years after the cause of action has accrued.

7.2 Limitation of Liability. EXCEPT FOR ACTIONS FOR NON-PAYMENT, BREACH OF INTELLECTUAL PROPERTY RIGHTS, OR BREACHES OF SECTIONS 3.3 OR 5.3, IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR RELIANCE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, UNDER ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED ON LEGAL OR EQUITABLE DOCTRINES. IN NO EVENT WILL PERFORMA'S LIABILITY TO CLIENT ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT PAID TO PERFORMA BY CLIENT IN THE 12 MONTHS PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION THAT GIVES RISE TO THE CLAIM.

7.3 Data Charges. In no event shall PERFORMA be liable for data or connection charges incurred by Client, Client Admin(s), and Users to download, access, or use the App, Admin Console, or Service.

7.4 Basis of Bargain; Failure of Essential Purpose. Client acknowledges that PERFORMA has furnished access to the Service, App, Admin Console, and Module(s) in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. Client agrees that the limitations and exclusions of liability and disclaimers specified herein will apply and survive termination even if found to have failed their essential purpose.

8. Indemnification.

8.1 Client Indemnification. Subject to PERFORMA's indemnification obligations in Section 8.2, and in addition to Client's indemnification obligations set forth in Section 5.6, Client shall indemnify PERFORMA against, and hold PERFORMA harmless from, any claim, demand, cause of action, damage, liability, or expense, including reasonable attorneys' fees incurred by PERFORMA arising out of: (i)

Client's, Client Admins' or Users' use of the Service and App, or (ii) the acts or omissions of Client and its Client Admins, Users, employees, or agents.

8.2 PERFORMA Indemnification. PERFORMA expressly agrees to defend, save, hold harmless, and indemnify Client from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Service and App or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "**Intellectual Property Rights**") of any third party, provided that Client gives PERFORMA prompt notice of such claim, suit or proceeding, and gives PERFORMA the full information and reasonable assistance in the defense or settlement of such claim, suit, or proceeding. PERFORMA shall be entitled to direct such defense and to settle or otherwise dispose of such claim, suit or proceeding as it sees fit, provided that PERFORMA shall not be entitled to agree to any judgment or settlement that imposes any monetary obligation on Client without the prior written consent of Client. If PERFORMA believes at any time that the services infringe a third party's Intellectual Property Rights, PERFORMA may, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Client the right to continue to use the infringing item; (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the services continue to function in conformance with this Agreement, and (iv) if (i) through (iii) are not commercially practicable, PERFORMA may terminate the Agreement and refund on a pro rata basis any unused portion of the Service Fees paid upfront.

8.2.1 Notwithstanding anything herein to the contrary, PERFORMA shall not be liable under this Article 8.2 for any claim for infringement based on the following:

8.2.1.1 Client's modification of the Service, Software, Modules, App, or Admin Console without the written permission of PERFORMA.

8.2.1.2 Use of the Service, Software, Modules, App, or Admin Console in a manner other than as contemplated by this Agreement, or as authorized in writing by PERFORMA.

9. Termination.

9.1 Termination for Convenience. Client shall have the right to partially or completely cancel the Service upon thirty (30) days' written notice to PERFORMA. Termination for convenience does not entitle Client to a refund of any fees paid for the Service, whether or not the Service has been used in full or in part.

9.2 Termination for Cause. Either party may terminate this Agreement upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period.

9.3 Surviving Provisions. The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration for a period of three (3) years: Sections 5 (excluding Section 5.2), 6, 7, 8, 9, 10, and 11.

9.4 User Data after Termination. PERFORMA may retain User Data after termination, subject to the provision of Section 5.5 and 5.5.1 above. Client may request to receive an electronic copy of User Data upon termination.

10. Dispute Resolution.

10.1 Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation directly between executives of each party who have authority to settle the controversy. Any party may give the other party written notice of any dispute that arises under this Agreement. Within 15 days after delivery of the written notice, the receiving party shall provide a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments

supporting that position, and (b) the name and title of the executive who will represent that party at the negotiation and of any other person who will accompany the executive. Within 30 days after delivery of the initial written notice, the designated executives of both parties shall meet at a mutually acceptable time and place.

10.1.1 Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the meeting of designated executives (“**Meeting**”). Ending the Meeting without a resolution shall not preclude further negotiation or mediation, if mutually desired by the parties.

10.1.2 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation and the Meeting by any of the parties, their agents, employees, experts and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in an arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

10.1.3 At no time prior to the conclusion of the Meeting shall either side initiate an arbitration or other legal proceeding related to this Agreement except to pursue a provisional remedy that is authorized by law or by the JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 10.1 above.

10.1.4 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 10.1 and 10.1.1 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

10.1.5 If a party refuses to participate in the procedures and processes set forth in this Section 10.1, that party forfeits any right to recover prevailing party attorney's fees and costs in any subsequent arbitration or legal proceeding.

10.2 Arbitration. If the procedure set out in section 10.1 above does not resolve the dispute, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Orange County, California before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator shall issue a written decision setting forth the bases for the arbitrator's ruling, and judgment on the arbitration award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

10.2.1 Except for claims for violation or breach of PERFORMA IP Rights, in any arbitration arising out of or related to this Agreement, the arbitrator may not award any incidental, indirect, consequential, or reliance damages, including damages for lost profits.

10.2.2 In any arbitration arising out of or related to this Agreement, the arbitrator is not empowered to award punitive or exemplary damages, except where permitted by statute, and the parties waive any right to recover any such damages.

10.2.3 In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration, unless the party failed to comply with the resolution procedures as set forth in section 10.1 above and as specified in section 10.1.5. If the arbitrator determines a party to be

the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

11. General Provisions.

11.1 Records Requests; Audits. From time to time during the Term of this Agreement, Client or its nominee, authorized agent, or representative may, in Client's reasonable discretion, (a) request documentation or records regarding Client's or its Users' use of the Service or User Data, including for Client to comply with governmental or regulatory requests or requirements (any such request, a "**Records Request**"); and (b) on at least three (3) business days' notice, inspect and audit PERFORMA's records solely as they relate to this Agreement (an "**Audit**" and, together with a Records Request, an "**Inspection**"). All Audits shall be conducted during regular business hours and no more frequently than once in any 12-month period (except as otherwise required to comply with applicable law), and in a manner that does not unreasonably interfere with PERFORMA's business operations. PERFORMA shall make available its books, records, equipment, information, and personnel as may be reasonably necessary to cooperate with any Inspection. Client shall only have access to and examine information directly related to Client's or its Users' use of the Service, and shall comply with all reasonable instruction communicated by PERFORMA in completing its Inspection. Client shall promptly reimburse PERFORMA for all expenses incurred by PERFORMA in connection with any Inspection, including but not limited to time and materials costs incurred to comply with any such request.

11.2 Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, exclusive of conflict or choice of law rules.

11.2.1 The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the

preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

- 11.3 No Benefit to Third Parties.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties, and they are not to be construed as conferring any rights on any other persons.
- 11.4 Notices.** All notices or other written communications required or permitted to be given sent pursuant to this Agreement shall be sent by overnight delivery, registered, or certified U.S. mail (return receipt requested) and addressed to the parties at the addresses first set forth above (or such other address as may be specified by like notice).
- 11.5 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 11.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objective of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.7 Assignment.** Neither party may assign or transfer this Agreement or any right or obligation hereunder without the other party's prior written consent; *provided*, that PERFORMA may assign this Agreement in connection with a sale or transfer of substantially all of the assets of, or a majority interest in the voting shares of, PERFORMA to, or the merger or consolidation of PERFORMA with or into, any other person or company. Any assignment made in violation of this provision shall be void. Client agrees that PERFORMA may subcontract the hosting and other services to be performed in connection with this Agreement, provided that any

such subcontracting arrangement will not relieve PERFORMA of any of its obligations hereunder.

- 11.8 Force Majeure.** Except for the obligation to pay money, neither party will be liable for failure or delay in performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, civil or military authority; terrorists, civil disturbance, fire or other catastrophe, parts shortages, governmental act, or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.
- 11.9 Use of Client's Name.** Client agrees to allow PERFORMA to use Client's name on client lists used for promotional purposes. PERFORMA is permitted to issue press releases or press statements concerning Client's use of the service.
- 11.10 Entire Agreement.** This Agreement and its attachments constitute the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Client purchase order or in any other Client order documentation shall be incorporated into or form any part of this Agreement and all such terms or conditions shall be null and void.
- 11.11 Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

[SIGNATURES ON FOLLOWING PAGE]

Dated:

[Garden Grove Police Department]

By: _____

Amir El-Farra

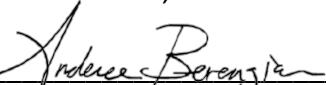
[Print Name]

Chief of Police

[Title]

Dated:

PERFORMA LABS, INC.

By: 

Andree Berengian

Chief Executive Officer

APPROVED AS TO FORM:

[City Attorney/County Counsel/Deputy Attorney General for Client]

**ATTACHMENT A
PRICE LIST AND SERVICE FEE CALCULATION**

TRAINING MODULE DESCRIPTION	SUBSCRIPTION TERM	SEATS	UNIT PRICE	TOTAL
Use of Force PSP (up to 4 hours POST PSP-Use of Force credit)	7/1/2023 - 6/30/2024	172	\$125.00	\$21,500.00
Strategic Communications PSP (up to 2 hours POST PSP-StratComm credit)	7/1/2023 - 6/30/2024	172	\$75.00	\$12,900.00
De-Escalation Awareness & Communication (up to 4 hours POST CPT credit)	7/1/2023 - 6/30/2024	172	\$175.00	\$30,100.00
Advanced De-Escalation & Awareness Communication (up to 4 hours POST CPT credit)	7/1/2023 - 6/30/2024	172	\$175.00	\$30,100.00
SUBTOTAL				\$94,600.00
IMPLEMENTATION COST				\$13,760.00
VIP CUSTOMER DISCOUNT				(\$13,760.00)
TOTAL				\$94,600.00