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## MASTER SERVICES AGREEMENT

### *General Terms and Conditions*

This Master Services Agreement (this "Agreement") is entered into this 28th day of January, 2020 ("Effective Date") by and between **Performance Assessment Network, Inc.—A PSI Business and its Affiliates** (as defined below), having its principal place of business at 611 N. Brand Blvd., 10th Floor, Glendale, CA 91203 ("PSI"), and **CITY OF LONG BEACH** ("Company"), with its principal office at 411 W. Ocean Blvd., 4<sup>th</sup> Floor, **LONG BEACH, CA 90802**. PSI and Company are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, PSI is a developer and provider of assessment, examination and associated services;

WHEREAS, Company desires to enter into a business relationship with PSI to obtain certain services of PSI, and PSI desires to enter into a business relationship with Company to supply such services, upon the terms and conditions hereinafter set forth in this Agreement and any applicable Order;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and undertakings hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS.** As used throughout this Agreement, and any applicable Orders, the following terms shall have the meanings as specified below:

- a. **"Administration"** means the use of the Solution or Services and/or facilities to administer Tests or Assessments to Candidates. A single Administration occurs each time a Candidate commences a Test or Assessment; multiple Administrations occur if a Candidate commences multiple Tests or Assessments for which Results are separately reportable.
- b. **"Affiliate"** means as to a Party, any business entity that, directly or indirectly, controls, is under common control with, or is controlled by, this Party. For purposes of this definition, "control", "controls", "controlled by" and "under common control with" means the power to direct the management and policies of the business entity, whether through ownership of voting securities, by contract, or otherwise.
- c. **"Assessment"** means the evaluation or estimation of the nature, quality, or ability of a Candidate which may include a set of instructions and questions, problems, and procedures for assessment, including related scoring keys and analyses that are provided by PSI.
- d. **"Candidate"** means an individual, authorized by Company, who seeks to register, registers for, or commences a Test or an Assessment.
- e. **"Candidate Data"** means the personal Candidate information collected by PSI in performance of Services set forth in this Agreement and any applicable Order
- f. **"Candidate Fee"** means a fee that may be established by Company or PSI for each Test, Assessment or Administration.
- g. **"Company Content"** means all content and materials owned by and provided by Company, its employees or its Candidates to PSI or created through Company's utilization of the Services as documented in an Order, including Test or Assessment items provided by Company or developed by PSI, solely and exclusively for Company, during the Term, as set forth in an Order, Candidate Data, Results, Company's trademarks, service marks, and logos; excluding in all cases PSI Proprietary Materials.

- h. **“Confidential Information”** means nonpublic proprietary information of a Party that is disclosed to the other Party, including but not limited to: (i) business or technical processes, formulae, source codes, object code, product designs, sales, cost and other unpublished financial information, customer information, product and business plans, projections, marketing data or strategies, trade secrets, Intellectual Property rights, know-how, expertise, methods and procedures for operation, information about employees, customer names, business or technical proposals, and any other information which is or should reasonably be understood to be confidential or proprietary to the Disclosing Party, including any and all derivatives thereto ; and (ii) personally identifiable information. The foregoing definition of Confidential Information applies to: (1) all such information, whether tangible or intangible and regardless of the medium in which it is stored or presented; and (2) all copies of such information, as well as all memoranda, notes, summaries, analyses, computer records, and other materials prepared by the receiving Party or any of its employees, agents, advisors, directors, officers, and subcontractors that contain or reflect the Confidential Information.
- i. **“Deliverable”** means the results of the performance of Professional Services provided by PSI to Company in tangible or electronic form, such as Tests or Assessments that are expressly developed exclusively for Company, Results, consulting reports or other materials strictly related to consulting work set forth on an Order; for the avoidance of doubt, a Deliverable may contain both Company Content and PSI Proprietary Materials.
- j. **“Developed Content”** means any Test or Assessment, questions, answer keys, images, graphics, videos, trademarks, service marks, or logos that PSI creates solely and strictly for the Company’s use and as set forth in a specific Order.
- k. **“Documentation”** means all materials supplied by or on behalf of PSI hereunder for use in conjunction with the Services or Solution in any media or form, including: (i) any and all user’s guides and manuals, (ii) training materials, and (iii) any revisions or derivatives to such Documentation.
- l. **“Examination Delivery Services”** means the examination delivery services provided by PSI to Company associated with an Assessment or a Test and as described in an Order executed by the Parties hereto pursuant to this Agreement.
- m. **“Intellectual Property”** means any inventions, technological innovations, discoveries, designs, formulas, know-how, processes, business methods, patents, trademarks, service marks, copyrights and any applications thereof, computer software, ideas, creations, writings, lectures, illustrations, photographs, motion pictures, scientific and mathematical models, improvements to all such property, and all recorded material defining, describing, or illustrating all such property, whether in hard copy or electronic form.
- n. **“Legal Demand”** means a subpoena or other validly issued administrative, judicial, government or investigative regulatory demand or request or other legal process.
- o. **“Order”** means a written task order, work order, statement of work, or other order form for Services or the Solution submitted by Company and accepted in writing by PSI relating to this Agreement. Upon mutual execution by the Company and PSI, all Orders associated with this Agreement shall be deemed to be an amendment to and automatically incorporated into this Agreement.
- p. **“Personally Identifiable Information (or “PII”)** means any representation of information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means. Further, PII is defined as information: (i) that, in combination, directly identifies an individual (e.g., name, address, social security number or other identifying number or code, telephone number, email address, etc.) or (ii) by which a specific individual may be identified in conjunction with

other data elements, i.e., indirect identification. These data elements may include a combination of gender, race, birth date, geographic indicator, and other descriptors. Additionally, information permitting the physical or online contacting of a specific individual is the same as personally identifiable information. This information can be maintained in either paper, electronic or other media.

- q. **"Professional Services"** means the custom development, implementation, technical support, consulting or other professional services that may be provided by PSI to Company pursuant to an Order.
- r. **"PSI Proprietary Materials"** means all PSI Intellectual Property, Tests, Assessments, Developed Content, Software, Documentation and any other materials provided or made available to Company by or on behalf of PSI, including without limitation, the Solution and all other software used to create, publish, deliver, administer, score or report a Test or Assessment, including answer keys, item banks, Results, and manuals and other internal procedures for the secure Administration of Tests or Assessments.
- s. **"Results"** means a Candidate's responses to a Test or Assessment, including the results of any scoring, norming, or other analysis of such responses resulting from the Services.
- t. **"Services"** means any and all Examination Delivery Services, Solution Services, Professional Services and all other services provided under this Agreement pursuant to an Order executed by the Parties hereto.
- u. **"Software"** means the machine-readable versions of the software and computer applications licensed by PSI to Company pursuant to this Agreement and described on an Order executed by the Parties hereto.
- v. **"Solution"** means the PSI (or its licensors' or suppliers') proprietary recruiting, development, testing and assessment tools Software and all other software, information, URLs and links, questions, tests, tools, data, databases, designs, algorithms, user interface designs, architecture, class libraries, objects, Documentation, network design, know-how and other information or materials supplied or provided by PSI, or otherwise resulting from or used as part of or in connection with the Services (but specifically not including Company's general know how resulting from or in connection with its use of the Services).
- w. **"Solution Services"** means providing access to and use of the Solution and Candidate Data.
- x. **"Support"** means the general and technical assistance made available by PSI provided under this Agreement pursuant to an Order executed by the Parties hereto.
- y. **"Test"** means a set of instructions and questions, problems, and procedures for assessment, including related scoring keys and analyses that are provided by PSI.

## **2. SERVICES**

- A. **Service Provision.** During the Term of this Agreement and subject to Company's and its employees' compliance with all terms and conditions hereof, PSI shall provide to Company the Services. The Parties shall enter into a separate Order for any Services not uniquely identified in an existing Order. Each Order shall set forth: (i) the specific Services to be performed pursuant to the Order; (ii) if applicable, the time period for performance of the applicable Services; (iii) the fees related to the Services detailed in that Order; and (iv) any other terms and conditions agreed upon by the Parties in connection with the Services.
- B. **Service Control.** Unless specifically set forth in an applicable Order executed by the Parties hereto, PSI has and will retain sole control of the operation, provision, maintenance and management of the Solution and Services and the information technology infrastructure used by or on behalf of PSI in performing the

Services, including without limitation, all computers, software, hardware, databases, electronic systems and networks. Such control shall include without limitation the location where the Services are performed and any upgrades, updates, corrections or repairs to the Solution or Services.

- C. **Service Modifications.** PSI reserves the right, in its sole discretion, but is not obligated to, to make any changes to the Services, at PSI's cost, that it deems necessary or useful to, (i) maintain or enhance the quality, performance, cost or delivery of PSI's services to its customers; or (ii) comply with applicable law or other requirements.
- D. **New Orders.** PSI will evaluate Company requested changes to the scope, requirements or other terms of Services. If mutually agreed upon, the Parties will enter into a new Order detailing the modifications. No new Order will be effective unless and until it has been signed by an authorized representative of each Party.
- E. **Service Suspension.** PSI may, directly or indirectly, and by use of any other lawful means, suspend, terminate or otherwise deny Company's, or any employee's or user's or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if, (i) PSI is threatened with or receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly, or by reasonable implication, requires PSI to do so; or (ii) PSI believes, in its sole discretion, that, (1) Company or any employee or user has: (a) failed to comply with any material term of this Agreement and failed to cure within three (3) days after being provided notice, or (b) accessed or used the Solution or Services beyond the scope of the rights granted, or for a purpose not authorized under this Agreement or the applicable Order, or in any manner that does not comply with any material instruction or requirement set forth therein; (2) Company or any employee or user is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services or the Solution; or (iii) this Agreement or an Order expires or is terminated. This Section 2.E does not limit any of PSI's other rights or remedies, whether at law, in equity or under this Agreement or any Order.
- F. **PSI Solution Authorization.** With respect to any Services provided pursuant to a current Order, PSI authorizes Company to access and use the Solution through its Candidates solely for Company's own internal business purposes of Administration and in accordance with the terms of this Agreement and for no other purpose. This authorization is non-exclusive, terminable, non-sublicensable and non-transferable.
- G. **PSI Documentation.** Upon Company's written request, PSI shall provide to Company a copy of PSI's then-current user Documentation generally offered to PSI's other customers. Company may, during the Term, make copies of the Documentation as it may deem necessary for its use (including for archival/backup purposes, disaster recovery purposes and for testing purposes), provided that the copyright, trademark and other proprietary notices included therein by PSI will not be obscured or deleted.

### 3. **COMPANY RESPONSIBILITIES**

- A. **General Responsibilities.** Company will use all commercially reasonable efforts to ensure that all of Company's employees who may be reasonably necessary for the successful implementation and use of the Solution or Services will, on reasonable notice, (i) be available to assist PSI's personnel by answering relevant and appropriate Service-related business, technical and operational questions and providing relevant and appropriate requested documents, guidelines and procedures in a timely manner; (ii) participate in progress and Deliverable reviews; and (iii) participate in those activities and items relating to the Services as set forth in this Agreement or otherwise described in an applicable Order. Company shall, and shall cause its employees to, comply with all applicable laws and regulations in connection with its use of and access to the Services or Solution.

- B. **Authorization Limitations and Restrictions.** Company shall not, and shall not permit any other person to, access or use the Services, Solution or PSI Proprietary Materials except as expressly permitted by this Agreement or an associated Order. For purposes of clarity and without limiting the generality of the foregoing, except as expressly provided in this Agreement, Company shall not, and shall not allow any of its employees, personnel or contractors or any other third party to, (i) copy, modify or create derivative works or improvements of the Services, Solution, PSI Proprietary Materials or Deliverables; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services, Solution, PSI Proprietary Materials or Deliverables to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Solution or any other software provided in connection with the Services, in whole or in part; (iv) bypass or breach any security device or protection used by the Solution; (v) or access or use the Software, other than by its employees, or the Solution, other than by its employees or Candidates through the use of his or her own then valid access credentials; (vi) input, upload, transmit or otherwise provide to or through the Solution, any information or materials that are unlawful or injurious, or contain, transmit or activate any viruses or other harmful code; (vii) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Solution, Services, PSI Proprietary Materials or PSI's provision of services to any third party, in whole or in part; (viii) remove, delete, alter or obscure any trademarks, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Solution, Services, PSI Proprietary Materials or Deliverables, including any copy thereof; (ix) access or use the Solution, Services, PSI Proprietary Materials or Deliverables in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property right or other right of any third party, or that violates any applicable law; or (x) access or use the Solution, Services or PSI Proprietary Materials for purposes of competitive analysis of the Solution or Services, the development, provision or use of a competing software, service or product or any other purpose that is to PSI's detriment or commercial disadvantage. If Company becomes aware of any actual or threatened activity prohibited by this Section 3.B, Company shall, and shall cause its employees to, immediately, (1) notify PSI of any such actual or threatened activity, and (2) take all lawful measures within their control to stop the activity or threatened activity and to mitigate its effects (including by discontinuing and preventing any unauthorized access to the Solution or Services).
- C. **Employees & Contractors.** Company shall (i) be responsible for its employees' and contractor's compliance with this Agreement; (ii) be responsible for the quality and legality of any Company data and the means by which Company acquired such Company data; (iii) use all reasonable efforts to prevent unauthorized access to or use of the Solution or Services, and notify PSI promptly of any such unauthorized access or use; (iv) use the Services, Solution and Proprietary Materials only in accordance with this Agreement, any associated Order, or any applicable laws and government regulations; and (v) set up, maintain and operate in good repair all systems, computers, networks, hardware and internet access on or through which the Services or Solution is accessed or used. In the event PSI is required to access Company's premises to perform any of the Services, Company shall provide PSI's employees, personnel and representatives with access to Company's premises, systems, networks and hardware as is necessary to perform the Services. Company shall promptly notify PSI if at any time it fails to satisfy any such criteria.
- D. **Deliverable Acceptance Procedure.** Company shall have ten (10) business days ("Acceptance Window") from its receipt of any Deliverable hereunder to review and evaluate such Deliverable to determine whether the Deliverable meets, to Company's reasonable satisfaction, the requirements specific to the particular Deliverable. If Company does not accept such Deliverable within such Acceptance Window, Company shall provide PSI with a detailed written list or description of the inadequacies, defects, deficiencies or other problems in the Deliverable that led to the rejection so that PSI may fix any such inadequacies, defects, deficiencies or other problems in the Deliverable. Whereupon, PSI shall use commercially reasonable efforts to correct such problems and to deliver a corrected Deliverable to

Company for its review and acceptance as set forth above. If PSI does not receive such written rejection within such ten (10) business day period, such Deliverables shall be deemed accepted.

- E. **Cooperation; Effect of Failure or Delay.** Company agrees to reasonably cooperate with PSI in connection with implementation and delivery of the Services. Company agrees to timely perform its obligations under the applicable Order, including under any implementation schedule. PSI is not responsible or liable for any delay or failure of performance caused, in whole or in part, by Company's delay in performing, or failure to perform, any of its obligations under this Agreement or an Order.
- F. **Data Backup.** If expressly required by an Order, PSI agrees that it will store and maintain Company data in compliance with all applicable laws, including laws relating to security and privacy of data. PSI further agrees to secure and maintain Company data using commercially reasonable practices currently adopted in its industry for securing information of similar type and amount. Notwithstanding the foregoing, Company agrees that the Services do not replace the need for Company to maintain regular data backups or redundant data archives. EXCEPT AS EXPRESSLY SET FORTH IN AN ORDER, PSI HAS NO OBLIGATION OR LIABILITY WHATSOEVER FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF COMPANY DATA.

#### 4. **PROPRIETARY RIGHTS**

- A. **Company Content.** Company will retain all rights in all Company Content. Company grants to PSI a limited, assignable (according to the terms set forth herein), non-transferable, non-exclusive license to use Company Content during the Term for the sole purpose of providing the Services to Company as set forth in the applicable Order. Company grants to PSI a perpetual, worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, aggregate and distribute anonymized Candidate Data in any and all media or distribution methods (now known or later developed). PSI agrees not to use Company Content except as expressly agreed in writing by Company or otherwise authorized herein.
- B. **PSI Intellectual Property.** PSI (or its licensors or suppliers) will retain all Intellectual Property rights in the Solution, Developed Content, PSI Proprietary Materials, all Services, PSI products and all derivatives, improvements, or modifications thereto and any work product or results, developed, designed, or discovered in the course of providing, accessing or using the Services, Solutions or Developed Content, excluding Company Content. Company agrees not to use PSI's name or marks for any purpose without the prior written consent of PSI.
- C. **No Challenge.** Company shall not, during the Term or at any time thereafter, challenge the Intellectual Property rights of PSI in and to the PSI Intellectual Property.
- D. **Reservation of Rights.** Except as otherwise expressly provided for herein, nothing in this Agreement shall be deemed to grant, directly or by implication, estoppel or otherwise, any right or license with respect to any other technology or Intellectual Property rights, and each Party retains all right, title and interest in and to their respective technologies and other Intellectual Property rights.

#### 5. **FEES; PAYMENT TERMS**

- A. **Fees.** Fees for the Services will be incurred by Company in the amounts and on the schedule set forth in the applicable Order. Any pricing information included in any Order is applicable for the term specified in that Order only and is PSI Proprietary Material.
- B. **Payment.** Unless otherwise set forth in an Order, payments for any undisputed amounts are due to PSI net thirty (30) days after Company's receipt of the applicable invoice. All amounts will be paid in U.S. Dollars.

- C. **Late Payments.** Any undisputed amounts owing under this Agreement shall carry interest from the day after the date on which it is payable until actual payment at the rate of one and a half percent (1.5%) per month (or if less, the maximum rate permitted by applicable law). Further, if any undisputed amounts are not paid in full within sixty (60) days after the date on which it is payable, PSI may suspend the Services provided under this Agreement or any applicable Order until the unpaid amounts and related interest are paid in full. If Company reasonably disputes an invoice, it may withhold the disputed portion but shall pay the undisputed portion according to the terms set forth in this Agreement.
- D. **Expenses.** PSI shall invoice Company for any reasonable costs of mutually agreed travel of PSI personnel outside of their ordinary metropolitan area necessary to perform the Services. Company shall reimburse PSI for such other costs and expenses as are agreed upon in an Order. Reimbursement of any expenses shall be in compliance with this Agreement and the applicable Order, provided proper authority (ie. Executive Director or Deputy Director) has been secured from the company.
- E. **Taxes.** All amounts charged by PSI for Services are exclusive of all applicable sales, use, excise or any other taxes, excises, or government-imposed charges levied on, or incurred in connection with, the furnishing of the Services (including without limitation the collection of Candidate Fees), except for taxes on the net income of PSI. Company shall be solely responsible for the payment of such amounts, and PSI may invoice Company for any such amounts PSI is obliged to pay.
- F. **PSI Books and Records.** During the Term and for a period of two (2) years thereafter, PSI shall keep reasonable books of account and records at its principal place of business reasonably covering transactions relating to this Agreement. Subject to PSI's current policies and procedures, Company and its duly authorized representatives shall have the right to examine PSI's books of account and records with respect to the subject matter in this Agreement no more than once per calendar year, upon no less than thirty (30) days advance notice and during normal business hours. If such examination reveals that, there is a discrepancy from any payment owed to either Party, the Party underpaying shall promptly pay the other Party the amount of any actual underpayment.

## 6. **CONFIDENTIALITY**

- A. **Confidential Information.** For purposes of this Article, the party to whom Confidential Information belongs will be deemed the "Disclosing Party", and the Party receiving or otherwise becoming aware of Confidential Information of the Disclosing Party will be deemed the "Receiving Party". The receipt of Confidential Information will be subject to the following terms and conditions, which shall apply during the Term and any applicable Order and for a period of two (2) years after the termination or expiration of this Agreement or any applicable Order, which ever shall occur last:
  - i. Other than as expressly authorized in this paragraph, without the prior written consent of the Disclosing Party, which may be given or withheld in its sole and absolute discretion, the Receiving Party shall (1) not use, disclose, provide access to or distribute or permit a third party to use, disclose, provide access to or distribute any Confidential Information; and (2) only disclose the Confidential Information to (a) those of the Receiving Party's staff and consultants who need to know such information to perform obligations under this Agreement; and (b) professional advisers who need to know such information in connection with the Receiving Party's legitimate business purposes, provided all such individuals and entities are bound by confidentiality obligations no less restrictive than those in this Agreement.
  - ii. The Receiving Party shall use at least the same degree of care to avoid the publication, disclosure, reproduction or other dissemination of the Confidential Information as it employs with respect to its own valuable, proprietary information that Receiving Party protects from unauthorized publication, disclosure, reproduction or other dissemination, and in no event shall the Receiving Party use less than reasonable care.

- iii. If the Receiving Party receives notice that it may be required to disclose any of the Disclosing Party's Confidential Information in connection with legal proceedings or pursuant to a subpoena, order or official request issued by a court of competent jurisdiction or judicial, administrative, legislative, regulatory or self-regulating authority or body, the following terms will govern: The Receiving Party shall, to the extent permissible under applicable law, (1) first give written notice of the intended disclosure to the Disclosing Party as soon as practicable; (2) at the Disclosing Party's request, reasonably consult with the Disclosing Party on the advisability of taking steps to resist or narrow such disclosure requirement; and (3) if disclosure is required or deemed advisable, reasonably cooperate with the Disclosing Party in any efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information.
- B. **Exceptions.** Except for any personally identifiable Candidate Data, Confidential Information does not include any such information that the Receiving Party can reasonably demonstrate (i) becomes generally available to the public other than as a result of a disclosure by the Receiving Party (or third-party) having confidentiality obligations with respect to such information; (ii) was available to the Receiving Party on a non-confidential basis prior to the disclosure of such Confidential Information to the Receiving Party pursuant to this Agreement (on condition that the source of such Confidential Information was not known to the Receiving Party to be obligated to retain such information in confidence); or (iii) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party (on condition that the source of such Confidential Information was not known by the Receiving Party to be obligated to retain such information in confidence, or (iv) is independently developed by the Receiving Party without use of or reliance on such Confidential Information .
- C. **Return of Information.** PSI may retain (and are not obligated to return or destroy) any Confidential Information or Company Content pursuant to applicable law, regulation, internal document retention policies, professional standards or as part of automatic electronic archiving and back-up procedures, provided that any information so retained herein shall remain otherwise subject to the terms of the confidentiality obligations of this Agreement, and following the termination of this Agreement, such information shall be held in a manner consistent with the protection that PSI provides for its own confidential information.
- D. **Legal Demand.** In the event that either party to this agreement is required by law, rule, regulation or Legal Demand to participate in a proceeding or investigation to which it is not a named party or respondent, to produce documents or personnel as witnesses or for interviews, or otherwise to make information relating to Services under this Agreement available to a third party, or Company, the named party or respondent party shall reimburse the other party for its professional time, at its then current standard rates , and expenses, including reasonable attorneys' fees and expenses, incurred in responding to such requests, authorizations or requirements .

## **7. INDEMNIFICATION:**

- A. **Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party and its affiliates, and their directors, officers and employees (each, an "Indemnified Party"), from and against any and all third party claims, demands, liabilities, suits, damages, expenses and costs (including reasonable attorneys', experts' and investigators' fees and expenses) incurred by the Indemnified Party arising from or related in whole or in part to the indemnifying Party, or its affiliates', or its directors', officers' or employees' (i) material breach of this Agreement; or (ii) claims of infringement of the Intellectual Property rights of a third party caused singularly by the Indemnifying Party; or (iii) intentional wrongful acts or omissions.
- B. **Conditions.** Each Party's indemnification obligations shall be conditioned on the following: (i) the Indemnified Party shall provide prompt written notice of any claim to the indemnifying Party, provided



that any failure to provide such prompt written notice will only relieve the indemnifying Party of its obligations to the extent its ability to defend such claim is materially prejudiced by such failure; (ii) the indemnifying Party shall not consent to entry of any judgment or admission of any liability of the Indemnified Party without the prior written approval of the Indemnified Party; and (iii) the Indemnified Party shall cooperate in the defense of any claim as reasonably required by the indemnifying Party at the indemnifying Party's sole expense. In addition, the indemnifying Party may elect to take full control of any suit in which an Indemnified Party seeks indemnification under this Agreement. It is acknowledged and agreed that nothing contained herein (1) shall be considered a waiver by either Party of any remedy or right, in law or equity, all of which are expressly reserved without prejudice; or (2) prevents the Indemnified Party from obtaining separate counsel at such Party's sole expense.

**8. INSURANCE.**

- A. As a condition precedent to the effectiveness of this Agreement, Contractor shall procure and maintain, at Contractor's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following insurance:

(1) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

(2) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. (3) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

- B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.
- C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Contractor. Contractor shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.
- D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Contractor guarantees that Contractor will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

- E. Prior to the start of performance, Contractor shall deliver to City certificates of insurance and the

endorsements for approval as to sufficiency and form. In addition, Contractor shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Contractor and Contractor's sub-Contractors and contractors, at any time. Contractor shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

- F. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Contractor, Contractor's sub-Contractors and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.
- G. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Contractor's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

## 9. **REMEDIES**

- A. ***Limitation of Liability.*** EXCEPT FOR (I) LOSSES OR LIABILITIES RESULTING FROM EITHER PARTIES GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) BREACHES OF OBLIGATIONS OF CONFIDENTIALITY, IN NO EVENT SHALL COMPANY, PSI OR ITS LICENSORS BE LIABLE FOR DAMAGES HEREUNDER EXCEEDING THE GREATER OF (1) THE TOTAL FEES PAYABLE BY COMPANY TO PSI DURING A TWELVE MONTH PERIOD UNDER THIS AGREEMENT, OR (2) THE SUM OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000). IN NO EVENT SHALL COMPANY, PSI OR ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS, OR ANY EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING ATTORNEY'S FEES, RESULTING FROM, RELATING TO OR ARISING OUT OF THIS AGREEMENT, PSI'S SERVICES OR THE SOLUTION OR OTHERWISE RELATING TO THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- B. ***Cumulative Remedies.*** Except where a remedy is expressly identified as an exclusive or sole remedy with respect to a particular situation, the rights of the Parties under this Agreement are cumulative, and no exercise or enforcement by any Party of any remedy hereunder will preclude the exercise or enforcement by it of any other right or remedy hereunder, or to which any Party is entitled by law or in equity.

## 10. **REPRESENTATIONS & WARRANTIES**

- A. ***PSI.*** PSI represents and warrants that it shall perform the Professional Services in a professional and workmanlike manner, consistent with industry standards, including, without limitation, timely delivery of any Deliverables. In the event that Company reports a breach of this Section within thirty (30) days of the performance of the affected Professional Services and such breach is verified by PSI, PSI shall, at no additional expense to Company and as the exclusive remedy for such breach, re-perform the affected Professional Services.
- B. ***Company.*** The United States Department of the Treasury Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions imposed by the United States against foreign countries. The OFAC may also designate persons and entities (including persons and entities in the United States) as Specially Designated Nationals. The OFAC prohibits certain transactions with embargoed countries or Specially Designated Nationals and PSI strictly adheres to the OFAC sanction activities and such other sanctions as mandated by the United States. Company hereby represents and warrants to PSI that (i) Company has screened all Candidates against the Specially Designated National list maintained by the OFAC; and (ii) neither Company nor any client, sub-contractor or agent of Company, shall engage PSI to

provide Services to an embargoed country or Specially Designated National in contravention with United States law.

- C. **Both Parties.** Each Party represents to the other that (i) it has the legal right and authority to enter into this Agreement and perform its obligations under this Agreement; (ii) it holds any necessary governmental authorizations to conduct its business; and (iii) the performance of such obligations will not violate any applicable laws or regulations or breach any of its agreements with third parties.
- D. **Disclaimers.** Other than as expressly provided herein, PSI makes no warranties or representations concerning the Services or Solution or any results to be achieved through use thereof. OTHER THAN AS EXPRESSLY PROVIDED HEREIN, THE SERVICES, THE SOLUTION AND RESULTS THAT MAY BE OBTAINED THROUGH THE USE THEREOF, ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY AND PSI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Without limiting the foregoing, PSI makes no representation or warranty, (i) as to the completeness, usefulness, or timeliness of the Services or the Solution; (ii) that such information, any information provided on the Internet generally, or Company's or any Candidate's use of the Services or Solution will be uninterrupted or error-free; or (iii) that any information, Software or other material relating to the Solution is free of viruses or other harmful components.

#### **11. ADDITIONAL AGREEMENTS**

- A. **Limitations on Access and Use.** Company agrees to access and use the Services, Solution and PSI products only as expressly permitted by this Agreement and as set forth in an Order. Other than as contemplated in an Order, Company will not resell the Services, Solution or PSI products to any third party or use the Services, Solution or PSI products to process third party data for the benefit of a third party. Other than as contemplated in an Order, Company agrees that it will not allow parties other than its duly authorized employees, agents, customers, and Candidates (whether Company's or those of any customers receiving Services under this Agreement) to access or use the Services, the Solution or PSI products. Company agrees that it will not download, copy, publish, transmit, exploit, modify, create derivative works of, decompile, disassemble or otherwise reverse engineer the Services, the Solution, PSI products, PSI Confidential Information, or PSI Intellectual Property. Company agrees that it will not use the Services, the Solution, PSI products, PSI Confidential Information or PSI Intellectual Property other than for lawful purposes and in accordance with this Agreement. Company agrees that it will not use the Services, the Solution, PSI products, PSI Confidential Information or PSI Intellectual Property in a manner that violates the privacy, personal, proprietary, or contractual rights of third parties.
- B. **Responsibility.** Company assumes all responsibility and risk for its use of the Services, the Solution and the results obtained there from and any reliance, if any, that Company may place thereon. Without limiting the foregoing, Company agrees that PSI has no control over the quality or skills of the Candidate, the truth or accuracy of any information provided by the Candidate, or the ability of any Candidate to fill a position or any employment decisions that Company may make or not make, or any other employment or other matters, related to use of the Services, the Solution, PSI products or the results obtained there from.

#### **12. TERM; TERMINATION**

- A. **Term.** This Agreement shall continue for a period of two (2) years beginning on the Effective Date. Thereafter, Company shall have the option of renewing the agreement for up to three (3) additional years on the same terms and conditions, unless either Party gives written notice to the other of nonrenewal not less than sixty (60) days prior to the end of the then-current term. For the sake of clarity, each individual Order may specify a unique term for that specific Order.

- B. **Termination.** Either Party may terminate this Agreement or an Order at any time in the event that the other Party fails to perform any of its material obligations under this Agreement and fails to correct any such breach within thirty (30) days of written notice from the non-breaching Party. The termination of a specific Order may result in the termination of this Agreement or a separate Order by PSI in their sole discretion.
- C. **Termination for Convenience.** Either Party hereto may terminate this Agreement by providing the other Party thirty (30) days advance notice of their intent to terminate this Agreement.
- D. **Effect of Termination.** Upon the expiration or termination of this Agreement, (i) Company shall immediately cease all use of the Services and PSI Proprietary Materials; and (ii) Company shall immediately cease all use of and remove or otherwise destroy all copies of the Solution in Company's possession or control. Upon the expiration or termination of an Order, Company shall (1) immediately cease all use of the Services and PSI Proprietary Materials subject to such Order and promptly return to PSI any such PSI Proprietary Materials provided to Company or otherwise in its possession or control and any copies or extracts thereof, (2) immediately cease all use of and remove or otherwise destroy all copies of the Solution, subject to such Order, in Company's possession or control; (3) (if applicable) within sixty (60) days of such termination pay all accrued but unpaid fees and charges for the terminated Services or products through the date of termination. Upon Company request, provided such request is received by PSI no more than sixty (60) days from the termination or completion of the Services set forth in the Agreement or any applicable Order, PSI will deliver to Company (in a format of PSI choice) Company's Confidential Information and Company Content. PSI shall have no obligation for the return of any Company Confidential Information or Company Content more than sixty (60) days from the termination or completion of the Services hereunder.

### 13. **GENERAL**

- A. **Assignment.** The rights and interests of PSI under this Agreement may be assigned or transferred by PSI without the necessity of consent or approval of Company. Company understands and acknowledges that the rights and duties created by this Agreement are personal to Company and, accordingly, Company shall not sell, assign, transfer or convey this Agreement, without prior written consent from PSI, which may require in PSI's sole discretion that the assignee or transferee execute PSI's form of assignment consent or a new Agreement. Any change in ownership of either the equity interest or controlling interest of Company shall be considered an assignment of this Agreement.
- B. **Notice.** All notices and demands of any kind which either Party may be required or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served by internationally recognized express mail courier to the respective address of PSI and Company set forth in this Agreement or to other addresses as the Parties may specify in writing. Notices shall be deemed to have been given upon delivery.

City of Long Beach  
Christina Winting, Civil Service  
411 W. Ocean Blvd., 4<sup>th</sup> Floor  
Long Beach, CA 90802

PSI Services LLC  
Attn.: General Counsel  
611 N. Brand Blvd.  
10<sup>th</sup> Floor  
Glendale, California 91203

With a copy to:

Performance Assessment Network, Inc.- A PSI Business  
Attn: Contracts Administrator  
11590 N. Meridian St. Ste. 200  
Carmel, IN 46032

- C. **Law.** In the event of any dispute under this Agreement, the laws of the State of California shall govern the validity, performance, enforcement, interpretation and any other aspect of this Agreement and the Parties' relationship, without regards to its conflict of laws principles. The Parties expressly agree that any and all actions concerning any dispute arising under this Agreement shall be filed and maintained exclusively in a state or federal court of competent jurisdiction sitting in Los Angeles County in the State of California, and that such courts shall be the exclusive venue for any resulting proceedings. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such dispute. Service of process, summons, notice or other document by mail to a Party's address set forth herein shall be effective service of process for any dispute filed in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or proceeding in any such courts and irrevocably waive and agree not to claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- D. **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, if any Party (such Party, a "Nonperforming Party") is materially hampered, interrupted, interfered with or prevented from the performance of its obligations hereunder as a result of any contingency that is beyond the reasonable control of such Party, including epidemic, fire, action of the elements, governmental order, act of God or public enemy, war, riot or civil commotion (any such event, a "Force Majeure Event"), it is understood and agreed that such Nonperforming Party shall be temporarily excused from its inability to perform its obligations hereunder, but only to the extent and for the duration of the Force Majeure Event. The Nonperforming Party will give the other Party reasonably prompt written notice of the occurrence of such Force Majeure Event.
- E. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it will be modified rather than voided, if possible, in order to achieve the intent of the Parties to this Agreement to the extent possible. Any provision held overbroad as written will be deemed amended to narrow its application to the extent necessary to make the provision enforceable under applicable law, and enforced as amended. In any event, all other provisions of this Agreement will be deemed valid and enforceable to the fullest extent.
- F. **Compliance with Laws.** The Parties shall comply with, and shall require their employees, agents, representatives and other personnel to comply with all applicable federal, state, and local laws and regulations.
- G. **Employer-Employee Relationship.** Nothing in this Agreement shall be construed as creating an employer-employee relationship or agency relationship, partnership, franchise or joint venture between the Parties. Neither Party shall have the right or authority to make any commitment or obligation on behalf of the other to any person or entity.
- H. **Independent Contractors.** Company and PSI are independent contractors to each other. PSI may use third parties under contract with PSI to assist PSI in the performance of its obligations under this Agreement, provided that PSI will remain responsible for all its obligations under this Agreement whether or not such third parties so assist PSI.
- I. **Publicity.** Company agrees that during the Term of this Agreement PSI may publicly refer to Company, orally and in writing, as a customer of PSI.

- J. **Equitable Relief.** Each Party acknowledges that a breach of a Party's confidentiality obligations, or misappropriation or misuse of Intellectual Property, would cause irreparable harm to the non-breaching Party, the extent of which would be difficult to ascertain. Accordingly, the Parties agree that, in addition to any other remedies to which the non-breaching Party may be legally entitled, the non-breaching Party will have the right to seek immediate injunctive relief from a court of competent jurisdiction in the event of a breach hereof by the other Party.
- K. **Dispute Resolution.**
- i. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, may be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
  - ii. **Administrative Action and Injunctive Relief.** The institution of any arbitration under this Section K will not (1) relieve a Party of its obligation to make payments as required by this Agreement during the continuance of the arbitration proceeding, or (2) prevent either Party from filing administrative action, or applying for and obtaining from a court a temporary restraining order or preliminary injunctive relief pending the outcome of the arbitration.
  - iii. **Non-Binding Decision.** The decision of the arbitrator will be non-binding on the Parties, and they will comply with such decision in good faith. Each Party hereby submits itself to the jurisdiction of the courts of the State of ~~Delaware~~ <sup>California</sup>, but only for the entry of judgment with respect to the decision of the arbitrator under this Agreement, including injunctive relief if appropriate to render effective the arbitrator's decision. Notwithstanding the foregoing, judgment on the award by the arbitrator may be entered in any court of the State of Delaware or any court having jurisdiction. If judicial enforcement or review of the arbitrator's decision is sought, the prevailing Party will be entitled to its costs and reasonable attorneys' fees in addition to any amount of recovery ordered by the court.
  - iv. **Arbitration Fees.** Before the arbitrator decides for the arbitration, the Parties will pay the fees and expenses of the arbitrator in equal shares. In its decision, the arbitrator will award the prevailing Party all fees and costs, including arbitrator fee, and costs (and reasonable attorney and legal fees) incurred to bring, enforce, and collect arbitral award.
- L. **Survival.** It is mutually agreed by the Parties that any and all obligations arising under Sections 1, 3, 4, 6, 7, 8, 9, 10, 11.D, and 12 shall survive any termination or expiration of this Agreement.
- M. **Order of Precedence.** This Agreement and any Order(s) shall form a single integrated agreement between the Parties. In the event of any conflict between this Agreement and an Order, the terms and conditions of the Agreement shall govern unless expressly stated otherwise in the Order. The terms and conditions of this Agreement will control any conflicting course of dealing or performance or any conflicting or additional terms set forth in any Company purchase order or other ordering document (other than an Order accepted in writing by PSI).
- N. **Execution in Counterparts.** This Agreement or any Order may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Upon confirmation of delivery of an executed counterpart of a signature page to this Agreement by fax or other commonly-used electronic means (e.g., emailed PDF) shall be effective as delivery of a manually executed counterpart of this Agreement.

- O. **Modification and Waiver.** No purported amendment, modification, or waiver of any provision hereof will be binding unless set forth in a written document signed by both Parties (in the case of amendments or modifications) or by the Party to be charged thereby (in the case of waivers). Any waiver will be limited to the provision hereof and the circumstance or event specifically made subject thereto and will not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.
- P. **Headings; Construction.** The headings used in this Agreement are for convenience only and have no legal meaning or effect. Terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender include the feminine and neutral genders and vice versa. The terms "include," "includes" or "including" mean "including without limitation." The words "hereof," "hereto," "hereby," "herein," "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular section or article in which such words appear. The word "or" will not be construed as exclusive. It is agreed that any court or mediator interpreting or construing this Agreement shall not apply a presumption that this Agreement or any provision herein shall be more strictly construed against one Party by reason of any rule of construction, including that a document is to be construed more strictly against the Party who itself or through its agents prepared the same, it being agreed that both Parties and their respective agents have participated in the preparation of this Agreement and have engaged or had the right to engage legal counsel to represent them.
- Q. **Entire Agreement.** This Agreement (including any current and subsequently added Orders) represents the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior agreements and communications, whether written or oral, relating thereto.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the Effective Date.

Performance Assessment Network, Inc.

CITY OF LONG BEACH

A PSI Business

By: Brad Kendall  
AD8T06EDA3B0448...

Name: Bradley Kendall

Title: SVP, Corporate Talent Management

Date: 2/13/2020

By: Rebecca G. Garner  
Name: Rebecca G. Garner  
Title: Acting Asst. City Manager  
Date: 3/10/2020

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

APPROVED AS TO FORM

February 14, 2020  
CHARLES PARKIN, City Attorney  
By: Gary J. Anderson  
GARY J. ANDERSON  
PRINCIPAL DEPUTY CITY ATTORNEY