ACLU

Hand out document

RESOLUTION NO. ________

**WHEREAS,** the Police Department desires to enter into a data access agreement with Biometrica Systems, Inc. aimed at enhancing collaboration through real-time data access and innovative technology while ensuring compliance with legal standards; and

**WHEREAS,** Biometrica Systems, Inc. will provide the City of Dothan with direct access to its UMbRA database, which is sourced from multi-jurisdictional law enforcement data, and Biometrica agrees to cover all costs associated with the data integration; and

**WHEREAS,** the City of Dothan commits to ensuring access to its Jail Management System (JMS) or Records Management System (RMS) within 30 days of signing the agreement; and

**WHEREAS,** the said agreement allows two (2) authorized Licensee member accounts to access the UMbRA interface, with unlimited search capabilities at no cost to the City of Dothan, and Biometrica Systems, Inc. agrees to set up user access within 48 hours after the integration is completed.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the City of Dothan, Alabama, as follows:

**Section 1.** That the City of Dothan enters into an agreement with Biometrica Systems, Inc. to enhance investigative efforts through improved data access while ensuring compliance with legal standards and maintaining data integrity at no cost to the City of Dothan, which said agreement follows:

biometrica

## UMbRA LAW ENFORCEMENT DATA ACCESS AGREEMENT AND TERMS OF USE

This UMbRA **Law Enforcement Data Access Agreement Terms of Use** (the "Agreement") is between **Biometrica Systems, Inc.** ("Biometrica" or "Company") and you, the **Licensee Law Enforcement Agency** (the "Licensee"), together, the "Parties". Please read the Agreement.

This Agreement governs the data access agreement between the Parties, which will allow Biometrica direct access to Licensee booking, warrant and sex offender data, in addition to governing the terms and conditions of Licensee's direct access to Biometrica's UMbRA database via a web-based User Interface ("the Interface"), provided by Biometrica directly and licensed to Licensee. By accessing UMbRA, Licensee agrees to be bound by the Terms of Service of this Agreement.

The Agreement also applies to any

- Subsequent version of the Interface
- Updates
- Internet-based services
- Support services

for this Interface, unless other terms accompany those items. If so, those terms apply.

Please review thoroughly before accepting. If you do not accept the terms of this Agreement, please do not access or use the Interface. By accessing or using the Interface, you agree to be bound by this Agreement and all accompanying Order Forms or Quotes for Solutions and incorporated policies (the "Terms"). The UI Interface license (the "License") is not available to individuals or entities that are not legally eligible to be bound by these terms and should not be made available directly or indirectly to individuals or entities not eligible to be bound by these Terms. Use of the License also operates as your consent to the receipt of results from the UMbRA database, the transmission of certain standard computer information during validation, the automatic download and installation of certain updates, and for Internet-based services.

**DISCLAIMER:** LICENSEE'S AUTHORIZED USERS WILL BE PERIODICALLY REMINDED AT LOGIN THAT TEXTUAL OR IMAGE RESULTS RECEIVED VIA THE INTERFACE FROM A SEARCH AGAINST THE UMbRA DATABASE ARE INDICATIVE AND SHOULD NOT BE CONSIDERED DEFINITIVE. THOSE RESULTS WILL NEED TO BE FURTHER INVESTIGATED AND VERIFIED. DO NOT PROCEED WITH LOGGING IN IF YOU DO NOT AGREE THAT THESE RESULTS ARE ONLY INDICATIVE, AND TO BE VIEWED ONLY IN THE LIGHT OF POINTER DATA, I.E., AS POSSIBLE INVESTIGATIVE LEADS. RESULTS WOULD NEED FURTHER INVESTIGATION AND INDEPENDENT CORROBORATION. BIOMETRICA MAKES NO GUARANTEES AS TO THE ACCURACY OF ITS DATA, INCLUDING, WITHOUT LIMITATION, AN ALGORITHMIC MATCH TO AN INDIVIDUAL. BIOMETRICA'S LICENSED FACIAL

RECOGNITION ALGORITHMS IN USE ARE FEDRAMP (MODERATE AND HIGH) AUTHORIZED. FEDRAMP STANDS FOR FEDERAL RISK AND AUTHORIZATION MANAGEMENT PROGRAM. ALGORITHMIC EVALUATION IS BASED ON THE NIST SPECIAL PUBLICATION 800-53 AND HAS BEEN FOUND TO BE EXTREMELY ACCURATE, BUT ALGORITHMIC PERFORMANCE UNDER REAL-WORLD CONDITIONS CAN DIFFER. THE QUALITY OF A SUBMITTED IMAGE, THE QUALITY OF THE IMAGE IN THE UMbRA DATABASE AND OTHER FACTORS CAN IMPACT AND POTENTIALLY REDUCE THE ACCURACY OF RESULTS. RESULTS FROM UMbRA SHOULD NOT BE USED AS THE ONLY SOURCE FOR CONCLUSIVELY ESTABLISHING OR DETERMINING AN INDIVIDUAL'S IDENTITY OR TAKING A PRE-ADVERSE OR ADVERSE ACTION, INCLUDING AND NOT LIMITED TO THE ISSUANCE OF A WARRANT OR MAKING AN ARREST. BIOMETRICA HAS NO ACCESS TO LICENSEE-INPUTTED DATA ON PERSONS BEING CHECKED VIA THE INTERFACE — I.E., COMPANY CANNOT SEE WHO A LICENSEE IS SEARCHING FOR OR ACCESS ANY SEARCH RESULTS — AND IT IS LICENSEE'S RESPONSIBILITY TO ESTABLISH PROTOCOLS TO CORROBORATE INFORMATION RECEIVED VIA A RESULT.

**RECITALS:**

A. Biometrica and Licensee are desirous of entering into a Data Access Agreement focused on smart collaboration, real-time data access and sharing, and innovative technology;

B. In order to facilitate real-time data access and support Licensee in their investigative efforts, Licensee will provide Biometrica's systems continued direct access to **real-time** Licensee booking, warrant and sex offender data with charge and subject details, including image data, demographic data and other relevant identifiers. Licensee will also make available detailed current, and when and where existing, historical booking data — including data on demographics, detainment, high-resolution photographic data, date of birth, charges, arresting agency, arrest ID, arresting officer, and any identifying information (such as driver's license, or address, if accessible) — as applicable under current local, state, and federal law to Biometrica;

C. Licensee will provide data in an information appropriate machine-interchange format (e.g., json, xml, html or link to downloadable face and other relevant — tattoos, scars, etc., — images) transmitted or retrievable via an appropriately secure access method for online communication of PII and would make this available free of charge;

D. Biometrica will be responsible for integration costs, if any, for this data access;

E. Licensee will be responsible for facilitating access to its Jail Management System (JMS) or Records Management System (RMS) within 30 days of signing this Agreement. When and where applicable, this includes facilitating data access to a third-party JMS or RMS contracted with Licensee to be a repository for their booking, sex offender or warrant data;

F. Biometrica will set up Licensee access and provide logins to the UMbRA Interface within 48 hours of successful data integration with Licensee RMS and/or JMS;

G. Licensee will provide direct access to real-time booking and warrant data without that access triggering charges, including from a third party, similar to or including captcha/reCAPTCHA charges, without any access limiting measures such as captcha/reCAPTCHA;

H. Access to UMbRA, using the web UI, will be provided **free-of-charge to 2 authorized Licensee member accounts**. There will be no limit to the number of searches that can be run by these

Authorized User accounts. Any additional accounts would necessitate a charge. Member accounts cannot be shared, for purposes of establishing an audit trail, that is, maintaining an immutable digital chain of custody;

I. Access to any other Biometrica products and solutions, including RTIS/RVIS, eMotive-EI, QAPLA, or the LMFI platform, would be provided via separate agreements, and other subscription, license and enrollment charges will apply.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

## 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

A. **"Access"** means, with respect to a computer program or other materials: (a) to use or execute the computer program or other materials; or (b) to use or otherwise benefit from the features or functionality of the computer program or other materials.

B. **"Authorized User"** means a credentialed Licensee user, including and not limited to the person(s) making a query and receiving potential matched results from UMbRA via the UI. An Authorized User could also be a permitted third-party user that is authorized by the Licensee via their License. Authorized User accounts cannot be shared and Authorized User logins must not be shared; every account is attached to one person and Biometrica maintains an audit trail of logs.

C. **"Biometrica IP"** means intellectual property within the UMbRA Database and the Software, including the Interface, and any intellectual property or proprietary information therein or otherwise provided to Licensee and/or its Authorized Users.

D. **"Individuals"** means persons Licensee is authorized to perform criminal background checks on through algorithmic queries, for a legitimate and lawful purpose. For clarification, Licensee may use the UI for (i) purposes of lawful investigations, gathering of threat intelligence, and crime prevention; (ii) criminal justice or statistical research; (iii) analytical, legal or forensic purposes; (iv) protecting children or vulnerable adults, preventing the exploitation of children or vulnerable adults; (v) to prevent trafficking in persons and identify victims or missing persons; (vi) because of an imminent threat to life or limb; (vii) for purposes of public health; (viii) for protection of critical infrastructure and facility security; (ix) for national security or cybersecurity; (x) for identification, or location of persons of interest; and (xii) any other purposes not defined here but generally recognized to fall under lawful law enforcement purview. All such use must comply with all allocable and applicable federal, state, tribal local and international laws.

E. **"Initial Term"** shall have the meaning set forth below.

F. **"Integration"** means an integration between Biometrica's systems and Licensee's data repository for its booking, warrant and sex offender data, which may include a third-party vendor contracted with Licensee to be their JMS or RMS.

G. **"JMS"** or **"Jail Management System"** means a jail management information system that provides users with the ability to track and manage inmate information from booking to release and also manage and share that data.

H. **"Licensee Data"** means any image or other data uploaded, submitted, or provided by Licensee to be run against UMbRA.

I. **"Order Form" or "Quote for Solutions"** in this Agreement refers to an accepted and signed sales order form between Company and Licensee, for certain Company products and solutions.

J. **"Renewal Term"** shall have the meaning set forth below.

K **"RMS" or "Records Management System"** means an agency-wide system that provides for the storage, retrieval, retention, manipulation, archiving and viewing of information, records, documents, or files pertaining to law enforcement operations. An RMS covers the entire life span of records development— from the initial generation to its completion. Such records include incident and accident reports, arrests, citations, warrants, case management, field contacts, and other operations-oriented records.

L. **"Software"** means a computer program, or a module or component of a computer program, distributed or made available by Biometrica to Licensee pursuant to this Agreement; where the context so indicates, the term "Software" also refers to functions and features of a computer program, including the Interface.

M. **"Real-Time"** means every hour, or every two hours, or every three hours.

N. **"Results"** means the results of a single textual or an image search query made against the data in UMbRA.

O. **"UMbRA"** means the searchable, multi-jurisdictional, real-time database comprised of law enforcement-sourced non-biometric data, which includes charge or booking data, criminal data, and warrant data. Additionally, UMbRA records may contain non-searchable information inputted by law enforcement that includes records like AMBER alerts, Silver alerts or data on other missing persons or persons of interest in investigations. This additional data is not searchable on its own in UMbRA, either through this License via the Interface, or through an API.

P. **"Third Party"** means any Person outside Licensee's organization, including and not limited to third-party vendors and third-party individuals or agencies that use the Licensee's license to access UMbRA or receive results from UMbRA.

## 2. LIMITATIONS OF DATA

2.1 **No Juvenile Data.** Licensee understands and acknowledges that Biometrica does not source, amalgamate or distribute juvenile booking or criminal data. Therefore, for example, in the case of a missing minor who is believed to have had a law enforcement event like an arrest, there would only be a possible match in UMbRA if a minor has been missing long enough to have grown into adulthood at the point of arrest or/and conviction, or if a minor, for whatever reason, is charged/convicted as an adult and the law enforcement jurisdiction concerned has made that data available.

2.2 **No Social or other Non-Law Enforcement sourced Data.** Licensee understands and acknowledges that Biometrica does not source, amalgamate or distribute data from social media accounts or platforms, any other media platforms, credit information bureaus, DMV records, property records, or from other similar sources. UMbRA data is sourced 100% from law enforcement records.

2.3 **Data criteria.** There would only be a possible match via an Interface search if an individual has been charged with a crime, convicted of a crime, placed on a sex offender registry, is on probation or parole, or is wanted by a law enforcement body in connection with an event.

Further, any record would only be available in UMbRA if the following criteria is met:

i) That record is from a law enforcement jurisdiction that has made its records available either through a publicly accessible database or, in some cases, to Biometrica through a non-public data feed by a special arrangement for data-sharing.

ii) That law enforcement jurisdiction has updated its database to reflect that record, and/or updated that record as it progresses through a system.

2.4 **Availability of Data in UMbRA.** Licensee understands and acknowledges that the details of the data that is available in UMbRA depends on what a law enforcement jurisdiction makes available and this may or may not include image data and/or other demographic and personally identifiable details. To elaborate, a law enforcement agency may make first name, middle name, last name, aliases, gender, height, weight, race, date of birth, date of booking, date of release, charges, arresting officer, facility, arrest ID, and bond amount available, but not have an accompanying image. Another agency may have the image of the face, tattoos, and other details but no date of birth. As much as possible, Biometrica would prefer to source data directly from law enforcement jurisdictions in order to get all available demographic and image details and active warrant data, and will make every effort to do so, in order to support law enforcement agencies and other credentialed organizations in their public safety and other trust and safety obligations.

2.5 **Non-compartmentalization of Data.** Licensee understands and acknowledges that data contained in UMbRA cannot be compartmentalized, and includes both current and historical records, because data in UMbRA may be used to help locate missing persons and victims of trafficking and recognize unidentified remains, in addition to supporting the work of cold case investigators.

2.6. **Applicability of Law to Results.** Licensee understands and acknowledges that if and when there is a potential algorithmic match to an individual via an UMbRA query to a record that is older than a period that is allowed to be considered by applicable law or a statute of limitations, Licensee must apply applicable law in determining whether that data can be considered as relevant or not for the purposes of making a determination of a match.

2.7. **Availability of Historical Record.** Licensee understands and acknowledges that whether UMbRA contains historical data from a jurisdiction for a certain period depends on when that jurisdiction in question digitized their records and what they made available. The period varies per jurisdiction. For the purposes of explanation, any data in UMbRA begins from the point UMbRA started ingesting data from a county and what data they made available at the point of ingestion or make available via an update at a later time. For some counties, that means UMbRA receives their entire digital history at the point of first integration. To elaborate, there is some data from the states of Vermont and Arkansas in UMbRA dating back to the early 1950s, as these jurisdictions digitized available historical records and made them publicly available. But in other cases, there is no historical data available, and the data in UMbRA is available only from the point of integration of that jurisdiction into UMbRA. To elaborate, if a law enforcement jurisdiction was integrated in February 2021 and they have made no historical data available, records for that jurisdiction in UMbRA would only be available from February 2021, unless that law enforcement jurisdiction digitizes their historical records and makes them available at some point in the future.

2.8 **Data Coverage Gaps and Limited Liability.** Licensee understands and acknowledges that if a source law enforcement jurisdiction were to go offline for any reason beyond Company's control, **including and not limited to** that jurisdiction's feed being affected by weather or power outages, a cyber-attack, human or technical error, the agency concerned opting to update or change their records management system, jail management system, or other data management system, shutting down for regular maintenance, making a code change that necessitates an update at Biometrica's end, or law enforcement not having the resources to make updates on any given day, there might be coverage gaps on certain days or for certain périods and UMbRA may or may not be able to access, ingest, or recover the data from those days. Licensee understands and acknowledges that Biometrica and its agents, product developers, suppliers, licensors or partners cannot be held responsible for any such gaps in coverage or the consequences that any such gap in coverage may have on Licensee and any permitted third party it access data from or provides data to.

2.9 **No Warrant on Accuracy of Data.** Licensee understands and acknowledges that (i) UMbRA contains or accesses database and other content sourced and aggregated from third party law enforcement sources, (ii) such content has not been and will not be authored, screened or verified by Biometrica, (iii) the Company in no way warrants the origin, accuracy, correctness or completeness of such content, and (iv) the content is provided solely on an "as is" and "where is" basis purely as an informational tool and any results are possible leads requiring further human analysis and corroboration.

2.10 **No Liability for Non-availability of Data.** Licensee understands and acknowledges that Company can only access, ingest and make available records that Company has been given access to, and Licensee agrees that Company and its employees, contractors, subsidiaries, affiliates, suppliers, licensors, and partners cannot be held liable, directly or indirectly, for gaps in coverage arising from these limitations, including gaps in coverage that may directly or indirectly affect Licensee use of this data and/or ability to make a determination of further action or investigation based on the data.

## 3. DATA USE RESTRICTIONS

3.1 **Onboarding and Acknowledgements.** Following Licensee's execution of this Agreement, and before they may access the data via their platform, they understand and acknowledge they must participate in a 45-minute onboarding process with Company ("Onboarding"). The Onboarding typically includes training in Database and Interface use, and Licensee's acknowledgement that they will: (i) use the content only for permitted and legitimate lawful purposes; (ii) comply with all requirements of applicable law and regulations; (iii) not improperly discriminate against an individual being monitored, or otherwise misuse the information in violation of applicable laws or regulations; (iv) adhere to lawful procedures and protocols if and when they elect to use any "pointer data" gained from UMbRA in connection with an investigation that may lead to an adverse action relating to an individual; and (v) assign no liability to Company for individuals being monitored or investigated or any action they or any Third Party they work with may choose to take against individuals they choose to investigate.

3.2 **Corroboration of Results.** Licensee understands and acknowledges that any possible match, including an image match, does not establish probable cause to arrest or obtain a search warrant, nor is it cause for a pre-adverse or adverse action. It is only intended as a possible lead for additional corroboration and investigation. Any algorithmic match recommendations require to be analyzed by more than one human analyst/reviewer prior to establishing a possible match. An investigator assigned to a case must establish, with other corroborating evidence, that the individual identified by a match, for example, is the perpetrator in the alleged crime or is a genuine threat to public or workplace safety.

3.3 **Submitted Image, Modifications, Alterations.** Licensee and when applicable, any permitted third party it accesses comparative source data from or provides results from UMbRA to understands and acknowledges that results from a facial recognition query are heavily dependent on the kind of image submitted. Biometrica strongly recommends that any submitted image, including those from driver's licenses or other IDs, that is modified or altered prior to submission for a query, should have the process of that modification or alteration documented and signed off on by a supervisor. Any image alteration or modification may cause a misidentification and/or legal and prosecutorial questions at a later stage. If a modified or altered image requires to be used, Biometrica strongly recommends and Licensee — and any third party it accesses data from or provides data to — understands and acknowledges the recommendation that both the original image and the modified or altered image are retained separately, along with edit logs (for example, in Adobe Photoshop), and any output from the modified image that is provided to an investigator. For elaboration, alterations or modifications to a probe or trigger image include and are not limited to the following: Cropping, resizing, rotating of an image, blurring of backgrounds, straightening, correcting a facial pose, color/tint correction, de-blurring or sharpening, lens distortion correction, dewarping, red eye reduction, changing colors, hair, adding or removing head coverings, adding or removing face coverings, adding or removing facial marks, adding or removing makeup, adding or removing eyeglasses, adding or removing filters, using AI-generated images, and more.

***Please note that Images with eyes and/or faces obscured by sunglasses should not be submitted to the Interface for a search against UMbRA.***

3.4 **Limitations of Images from Fisheye Cameras.** Except in exceptional circumstances, Biometrica strongly recommends that images from fisheye cameras are not used, because face recognition often suffers from a performance degradation in accuracy when applied to images captured by fisheye cameras, as they use a process that causes a distortion in facial features. Fisheye cameras are best suited for providing situational or environmental awareness for users monitoring a wide area instead of applications like facial recognition. As a policy, Biometrica recommends that any original image and the altered or modified image should both be run against UMbRA and records kept of query search results, including and not limited to any that produce a different candidate set.

3.5 **Company Access Restrictions and Biometric Privacy.** Please note that Company systems are privacy compliant and Biometrica employees and contractors have no access to Licensee search or monitoring data, i.e., Biometrica employees and contractors have no access to any search queries made against UMbRA and cannot see any textual or image submissions made by anyone. Further, while both textual and image scans are run, Biometrica does not access, store any biometric templates. At the point an image is uploaded to be stored, it is merely an image; not a biometric. The biometric template that is generated when a facial recognition scan is run by Biometrica's licensed, NIST-approved algorithms is deleted and purged from the server on the completion of a search query. Biometrica does not maintain a gallery of biometric templates (faceprints).

## 4. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

4.1 **Warranty.** Biometrica shall use reasonable efforts consistent with prevailing industry standards to maintain the Software in a manner which minimizes errors and interruptions in the use of the Software. The Interface may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Biometrica or by third-party providers, or because of other causes beyond Biometrica's reasonable control, but Biometrica shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled disruption.

4.2 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 3.1 ABOVE IS LICENSEE'S SOLE REMEDY, AND BIOMETRICA'S SOLE LIABILITY, WITH RESPECT TO DEFECTS. BIOMETRICA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS OBTAINED FROM USE OF THE DATABASE AND INTERFACE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE IS PROVIDED "AS IS" AND BIOMETRICA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND

NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 9.6.

4.3 **Insurance.** Biometrica will maintain commercial general liability policies, a copy of which can be provided upon request.

4.4 **Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

## 5. INVOICES, TAXES AND FEES

5.1 **Subscription Fees.** Access to UMbRA will be provided **free-of-charge to two (2) authorized Licensee member accounts.** Member accounts cannot be shared in order to maintain an audit trail. Any additional accounts would necessitate a charge, as agreed upon and detailed in an accompanying Order Form or Quote for Solutions. Where and when applicable, if Licensee believes that Biometrica has billed Licensee incorrectly, Licensee must contact Biometrica no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Licensee acknowledges and agrees that a failure to contact Biometrica within this period will serve as a waiver of any claim.

5.2 **Special Services.** If Licensee requests any Special Services, for instance, building a specialized custom bulk database, then the charges for such services shall be separately invoiced, after discussion and agreement on pricing, as soon as practicable after the Special Services are provided and payment will be due upon receipt of invoice.

5.3 **Late Fees.** Licensee shall be solely responsible for the payment of Subscription Fee. All undisputed amounts due hereunder shall be payable in U.S. dollars by wire transfer or ACH to a U.S. bank account identified by Biometrica in writing. If any undisputed fee is more than thirty (30) days overdue, Biometrica may, without limiting its other rights and remedies, reserve the right to suspend access to its Software until such undisputed invoice is paid in full. Biometrica shall provide at least thirty (30) days' prior written notice to Licensee of the payment delinquency before exercising any suspension right. Undisputed, unpaid Subscription Fees which are more than thirty (30) days late shall incur an interest charge of one- and one-half percent (1.5%) per month or 18% per year. Licensee shall pay all of Biometrica's reasonable costs and expenses (including reasonable attorneys' and auditors' fees) if legal action is required to collect outstanding balances hereunder.

5.4 **Taxes.** Licensee is responsible for all applicable taxes, levies, or duties imposed by taxing authorities associated with use of the Software. If Biometrica has a legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Licensee is responsible, the appropriate amount shall be invoiced to and paid by Licensee unless Licensee provides Biometrica a legally sufficient tax exemption certificate, upon which Biometrica will not charge Licensee any taxes from which it is exempt. If any deduction or withholding is required by law, Licensee shall notify Biometrica and shall pay Biometrica any additional amounts necessary to ensure that the net amount that Biometrica receives, after any deduction and withholding, equals the amount Biometrica would have received if no deduction or withholding had been required.

## 6. TERM

6.1 **Term.** This Agreement will continue in force for a fixed term of thirty-six (36) months commencing on the Effective Date (the "**Initial Term**") unless specified otherwise in a signed Order Form/Quote for Solutions, in which case the terms of the Order Form/Quotes for Solution will prevail. This Agreement shall automatically renew for a one (1) year period (a "**Renewal Term**", and together with the Initial Term, the "**Term**") at the end of the Initial Term or any Renewal Term, unless either Party gives written notice to the other Party of its intention not to renew at least sixty (60) days prior to the expiration of the Initial Term or the then current Renewal Term.

6.2 **Termination for Cause.** Notwithstanding the foregoing, this Agreement may be terminated for cause, as follows:

(a) *With Default Notice*. Except as provided in Subsection (b) below, if either Party defaults in the performance of any material provision of this Agreement, the non-defaulting Party may give written notice (a "**Default Notice**") to the defaulting Party that if the default is not cured within thirty (30) days, the Agreement will be terminated. If, following such Default Notice, the default is not cured within the thirty (30) day period, then this Agreement will terminated immediately upon written notice (a "**Termination Notice**") from the non-defaulting Party provided that the default is not cured prior to issuance of the Termination Notice. If, however, the default is cured prior to issuance of the Termination Notice, the non-defaulting party shall have no right to terminate the Agreement based on the prior issued Default Notice.

(b) *Without Default Notice*. This Agreement may be terminated immediately, without service of a Default Notice, by service of a Termination Notice if Licensee dissolves or loses its charter or its equivalent, or becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors or goes into liquidation.

6.3 **Change of Law or Technology.** If, due to any change in applicable law or regulations or the interpretation thereof by any court or other governing body, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, or in the event of a change in technology that renders any transaction contemplated by this Agreement impracticable or impossible, the Party directly impacted by the change shall promptly give notice to the other Party, and the Parties' obligations under this Agreement shall be suspended until it is no longer unlawful or impracticable to proceed. In the event such condition continues to the end of the Initial Term or then current Renewal Term, either Party may terminate this Agreement by timely giving notice of non-renewal as required above.

6.4 **Termination of License.** Upon termination or expiration of this Agreement, the License granted hereunder will automatically and immediately terminate. Upon termination or expiration of any license granted to Licensee, Licensee must immediately destroy or return to Biometrica all materials related to the Software.

## 7. USAGE RESTRICTIONS

7.1 **Usage Restrictions on Biometrica IP and Software.** Biometrica and its licensors retain all rights, title and interest in and to the UMbRA Database and the Software, including the Interface, and Biometrica IP and its components, and Licensee acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Licensee further acknowledges that Biometrica retains the right to use the foregoing for any purpose in Biometrica's sole discretion. Licensee shall not: (i) copy or duplicate any of the Biometrica IP and Software; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Biometrica IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Biometrica IP; (iii) attempt to modify, alter, tamper with or repair any part of the Biometrica IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Biometrica IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Software or Biometrica IP; (vi) use the Software and data for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Licensee's rights. There are no implied rights.

## 8. DATA ACCESS CONDITIONALITY

**8.1 FCRA Compliance and Ethical Use of Data.** Licensee and any permitted third party it accesses comparative source data from or provides data to understands and acknowledges that Biometrica is subject to and compliant with the guidelines of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, and has a PI license. Biometrica's policies ensure all data use is ethical and consistent with authorized purposes while not violating the privacy, civil rights, and civil liberties (P/CRCL) of individuals. As such, Licensee understands that in compliance with such guidelines, Biometrica will provide access to its products or programs or applications only upon knowing and understanding the use of its data, which in this case is broadly understood to be lawful law enforcement business, as broadly defined in Section 1 (D) above.

## 9. MISCELLANEOUS

**9.1 Compliance with Laws.** Parties shall comply with all applicable local, state, tribal, federal, and international laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

**9.2 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

**9.3 Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

**9.4 Entire Agreement.** This Agreement, together with the Order Form(s), or a Quote for Solutions, is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral , communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Licensee's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon purchase order is subject to these terms. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail, except for pricing, in which a signed Quote for Solutions or Order Form will prevail. Licensee agrees that Licensee's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Biometrica with respect to future functionality or feature.

9.5 **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Biometrica shall at all times be and act as an independent contractor to Licensee.

9.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Nevada.

9.7 **Special Terms.** Biometrica may offer certain special terms which are indicated in a proposal and will become part of this Agreement, upon Licensee's prior written consent and the mutual execution by authorized representatives (*"**Special Terms**"*). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

9.8 **Feedback.** If Licensee provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Licensee hereby assigns to Biometrica all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

9.9 **Export.** Licensee may not remove or export from the United States or allow the export or re-export of the Biometrica IP, Data, or Software, or anything related thereto, or any direct product or solution thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Licensee or authority.

9.10 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

9.11 **Authority.** Access and use of the Software implies acceptance of this Agreement by the Licensee. Licensee's Authorized Users represent that they understand this Agreement and have the authority to access and use the Software.

9.12 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Licensee purchase order, this Agreement controls unless explicitly stated otherwise.

9.13 **Morality.** In the event Licensee or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Biometrica's reputation, Biometrica shall have the option to terminate this Agreement upon prior written notice to Licensee.

9.14 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. All notices will be provided to the email or mailing address listed in the Order Form/Quote for Solutions.

9.15 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of Licensee under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Licensee shall have the right to terminate this Agreement for non-appropriation with thirty (30) days written notice without penalty or other cost.

These Terms and Conditions are subject to change. Any change in these Terms will be communicated to Licensee via email or other digital medium within 48 hours of that change.

This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which taken together will constitute one single Agreement between the Parties with the same effect as if all the signatures were upon the same instrument.

IN WITNESS WHEREOF, the Licensee has caused this Agreement to be executed by their duly authorized representative effective as of the date and year written below.

**LICENSEE ACCEPTANCE (signature)**

______________________________

**Signatory Name:** Mark Saliba

**Signatory Designation:** Mayor

**Licensee Name:** City of Dothan

**Date:** 01/07/2025

______________________________

Signatory Name: William E. Benny

Signatory Designation: Chief of Police

Date:

**Resolution No.________**, entering into an agreement with Biometrica Systems, Inc. for the provision of direct access to the UMbRA database, continued.

**Section 2.** That Mark Saliba, Mayor of the City of Dothan and in such capacity, is hereby authorized and directed to execute the said agreement for and in the name of the City of Dothan.

**PASSED, ADOPTED AND APPROVED on** ________________________.

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**Mayor**

**ATTEST:**

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**City Clerk**

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**Associate Commissioner District 1**

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**Associate Commissioner District 2**

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**Associate Commissioner District 3**

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**Associate Commissioner District 4**

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**Associate Commissioner District 5**

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**Associate Commissioner District 6**
***BOARD OF CITY COMMISSIONERS***