



ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: FARO TECHNOLOGIES, INC. 250 TECHNOLOGY PARK LAKE MARY, FLORIDA 32746	DATE ISSUED: 5/25/2023 CONTRACT NO: 23-POL-SS-481 CONTRACT TITLE: FARO FREESTYLE 2 CORE KIT AND ASSOCIATED MAINTENANCE
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THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 23-POL-SS-481, including any attachments or amendments thereto.

EFFECTIVE DATE: MAY 29, 2023
EXPIRES: MAY 28, 2026
RENEWALS: THERE ARE NO RENEWALS AVAILABLE
COMMODITY CODE(S): 68041
LIVING WAGE: N

ATTACHMENTS:
AGREEMENT No. 23-POL-SS-481

EMPLOYEES NOT TO BENEFIT:
NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: TONY WAYNE	VENDOR TEL. NO.: (407) 333-9911
EMAIL ADDRESS: TONY.WAYNE@FARO.COM	
COUNTY CONTACT: SUSAN NOACK, POL	COUNTY TEL. NO.: (703) 228-4234
COUNTY CONTACT EMAIL: SNOACK@ARLINGTONVA.US	

PURCHASING DIVISION AUTHORIZATION

Kaylin Schreiber Title: Procurement Officer Date: 5/15/2023



**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 23-POL-SS-481

THIS AGREEMENT is made, on 5/25/2023, between FARO Technologies, Inc., 250 Technology Park, Lake Mary, Florida 32746 ("Contractor"), a Florida stock corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contract Pricing
- Exhibit C – Contractor Standard Terms and Conditions of Sale
- Exhibit D – Contractor End User License Agreement

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is to provide a FARO Freestyle 2 Core Kit with accessories and associated maintenance. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence, . The Work will commence on May 29, 2023 and must be completed no later than May 28, 2026 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents.

5. CONTRACT AMOUNT

This is a fixed-price contract. The Contractor agrees that the total payment for the Work will not exceed \$37,932.28, regardless of the number of hours spent in the performance of the Work.

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract.

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within thirty (30) days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. All payments will be made from the County to the Contractor via ACH. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices. All past due amounts shall bear interest at the lesser of (a) one and one-half percent (1.5%) per month, or (b) the maximum rate allowed by law.

7. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Exhibit B includes all costs and expenses of providing the services described in this Contract.

8. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

9. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

10. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

12. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

13. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all

solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

17. SEXUAL HARASSMENT POLICY

If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

18. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

19. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified

by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

20. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all direct damages from losses, damages, injuries, fines, penalties, costs (including court costs and reasonable attorneys' fees), charges, liability, demands or exposure caused by the Contractor's (or the Contractor's employees or subcontractors') negligent or intentionally wrongful acts or omissions, including the acts or omissions

of its employees and/or subcontractors, in performance or nonperformance of the Contract, except to the extent caused by County. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting reasonable payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all direct damages from claims, losses, damages, injuries, fines, penalties, costs (including court costs and reasonable attorneys' fees), charges, liability or exposure caused by the Contractor's (or the Contractor's employees or subcontractors) infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting reasonable payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. INTELLECTUAL PROPERTY RIGHTS

By this Contract, the Contractor retains all background intellectual property rights in the products and grants the County a license to use Contractor's background intellectual property, in object code form only, with a prohibition against reverse engineering.

23. CONFIDENTIAL INFORMATION

The Contractor and its employees, agents and subcontractors will hold as confidential all County information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement.

24. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the

Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

25. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

26. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract, provided that the affected party gives notice to the other party as soon as practicable after the force majeure event, including reasonable detail and the expected duration of the event's effect on the party.

27. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

28. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

29. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

30. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, reports must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)

- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

31. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years, or such period of time required by the County's funding partner(s), if any, whichever is greater, after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, or such period of time required by the County's funding partner(s), if any, whichever is greater, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

The Purchasing Agent may require the Contractor to demonstrate that it has the necessary facilities, ability, and financial resources to comply with the Contract and furnish the service, material or goods specified herein in a satisfactory manner at any time during the term of this Contract.

32. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

33. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

34. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

35. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

36. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

37. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

38. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

39. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

40. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

41. ATTORNEY'S FEES

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

42. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND CONFIDENTIAL INFORMATION.

43. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

44. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

45. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Tony Wayne
FARO Technologies Inc.
250 Technology Park
Lake Mary, Florida 32746
Phone: 407.333.9911
Email: Tony.Wayne@faro.com

WITH A COPY TO:

FARO Technologies, Inc.
Attn: Legal Department
250 Technology Park
Lake Mary, FL 32746
Email: legal@faro.com

TO THE COUNTY:

Susan Noack Project Officer
Arlington County, Virginia
1425 N. Courthouse Road
Arlington, VA 22201
Phone: (703) 228-4234
Email: snoack@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

46. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

47. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

48. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$500,000/500,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Professional Errors & Omissions Liability - \$1,000,000.
- e. Cyber Liability - \$2,000,000.
- f. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be listed as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- g. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- i. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County’s acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor’s insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.


49. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

FARO TECHNOLOGIES INC.

AUTHORIZED SIGNATURE:  2513E5602A3A4DE...

AUTHORIZED SIGNATURE:  F01D2634105D43E...

NAME: Kaylin Schreiber

NAME: Craig Cupach

TITLE: Procurement Officer

TITLE: Director of Sales

DATE: 5/25/2023

DATE: 5/25/2023

AGREEMENT NO. 23-POL-SS-481

EXHIBIT A: SCOPE OF WORK

The Contractor shall supply and deliver the FARO Freestyle 2 kit itemized in Exhibit B: Pricing to the address indicated on the Purchase Order (PO) within 42 days of the receipt of the PO.

1. The Contractor shall provide maintenance of the FARO Zone 3D and FARO Freestyle systems and associated software for a period of three years from date of shipment.
2. The Contractor shall provide maintenance and support in accordance with the "Complete Care" service level, which includes:
 - a. One day, on-site hands-on Scanner training session to help solve customer specific applications.
 - b. Phone, email, and online technical support from live customer service representatives and a self-help knowledge base through the "FaroNOW!" online portal.
 - c. Embedded software and driver updates.
 - d. All parts and labor for repair and calibration.

EXHIBIT B CONTRACT PRICING

1. EQUIPMENT PURCHASE:

The County will pay the following amounts in accordance with the Payment clause of agreement upon receipt of the equipment.

ITEM NO.	DESCRIPTION	QTY	TOTAL AMOUNT
900-00099-000	Freestyle2_Sensor_FAROFARO Freestyle 2 Core Kit. Includes the Freestyle 2 Sensor and One (1) year of manufacturer warranty. A compatible Android smartphone is required.	1	\$12,753.00
810-000138-000	dS_AccessoryKit_FARO	1	\$1,890.00
FA0215	MobilePC_Faro	1	\$2,736.80
ACCS-PWR-0014	3D_AC_LS_FocusS Battery Power Block Power Block battery for Focus laser scanner and Freestyle.	1	\$549.00
ACCS-PWR-0013	3D_AC_LS_FocusS Battery Power Dock Power Dock charging cradle for Focus laser scanner.	1	\$610.00
ACCS-PWR-0010	3D_AC_LS_FocusS 90W Power Supply Power supply for Focus laser scanner S, M, S Plus	1	\$110.00
ACCS8039	3D_AC_FS2_Mobile_Phone High-end Smartphone compatible with FARO® Cobalt Detail 3D.	1	\$738.00
TR-AS-SCN-O	Scanner Tr. AS-Customer Site. One day hands-on Scanner training session to help solve customer specific applications.	1	\$2,893.00
	SHIPPING AND HANDLING		\$25.38
TOTAL EQUIPMENT PURCHASE:			\$22,305.28

2. EQUIPMENT MAINTENANCE:

The County will pre-pay for 3 years of maintenance in one lump sum payment.

ITEM NO.	DESCRIPTION	QTY	TOTAL AMOUNT
SV2-SCNB-3Y-R	FOCUS Standard Complete Care-3 Yr. Rnwl.	1	\$10,659.00
SML51007-1M	FARO Zone 3D Expert Maint Recovery 1M, Zone 3D Expert Software, service fee to allow reactivation of software maintenance if expired for less than 12 months. Maintenance renewal sold separately.	1	\$81.00
SMAR51007-3Y	FARO Zone 3D Expert Maintenance Rnwl 3Y Zone 3D Expert annual maintenance renewal includes product updates and upgrades (as available), including top tier technical support for three (3) years. Customer must be on the most current software release to purchase this plan.	1	\$2,175.50
SML0900-1M	SCENE MAINT RECOVERY 1M SCENE. Fee allows the reactivation of maintenance contract on monthly basis. Mandatory maintenance contract renewal sold separately. Entitles to any version released since expiration.	1	\$99.00
SMAR0900-3Y	SCENE MAINT - 3Y RNWL	1	\$2,612.50
TOTAL MAINTENANCE:			\$15,627

EXHIBIT C

CONTRACTOR TERMS AND CONDITIONS OF SALE

All capitalized terms used but not defined in the body of this document are defined in Section 10.00 (Definitions).

1.0 Payment of Purchase Price

1.01 Intentionally omitted.

1.02 Purchaser shall provide FARO, on request, with properly completed exemption certificates for any tax or duty from which Purchaser claims an exemption.

1.03 Purchaser grants to FARO a security interest in all Product sold pursuant to the Order, which FARO may perfect by filing a UCC Financing Statement or by other filings, registrations, or notices as may be required. Any such security interest will remain in effect until FARO has received payment in full of the Purchase Price together with interest on any late Purchase Price payments.

1.04 If Purchaser fails to make full payment of the Purchase Price in accordance with the terms set forth in the Order, FARO shall, at its sole option, have the right to the following remedies, which shall be cumulative and not alternative:

the right to cancel the Order;

the right to withhold all services that would otherwise be required to be provided by FARO pursuant to the Warranties set out in Section 4.00 (Warranties and Exclusions; Exclusive Remedies and Disclaimers); and the right to pursue any other available remedy.

1.05 Except as expressly set forth in Section 4.06 (Factory Repairs), FARO does not permit returns on any Products shipped. In addition, FARO does not permit returns of Software delivered digitally, including Software downloaded by Purchaser or Software activated by a product key received by Purchaser via electronic mail, flash drive, memory card, or similar type of electronic delivery system.

1.06 In the event more than one Product is being purchased pursuant to the Order, unless otherwise set forth herein, each payment received by FARO from Purchaser shall be applied pro rata against the cost of each Product rather than being applied to the Purchase Price of any Product.

1.07 Intentionally Omitted

2.0 Delivery and Transportation

2.01 Delivery dates set forth in the Order are estimates and not guarantees and are based upon conditions at the time such estimate is given.

2.02 FARO shall not be liable for any loss or damage, whether direct, indirect or consequential, resulting from delivery of Product past the estimated delivery date. If Product is not delivered within 90 days of the estimated delivery date, Purchaser's sole remedy shall be to cancel the Order and to recover from FARO, without interest or penalty, the amount of the down payment or deposit and any other part of the Purchase Price which has been paid by Purchaser.

2.03 If there is a shortage of Product, excessive demand for Product, or any other reason for which FARO is unable to supply the full amount of Product specified in Purchaser's Order, FARO reserves the right to allocate its available supply of Product among its customers and distributors. The allocation of Product shall be in such a manner and in such amounts as FARO determines in its sole discretion.

2.04 Intentionally omitted.

2.05 Unless otherwise agreed to by FARO in an Order, Product shall be delivered by FARO at FARO's premises EXW (Ex Works).

3.0 Installation, Operator Training and Maintenance

3.01 Purchaser shall be responsible for installation of Product, including, without limitation, the preparation of its premises, the uncrating of Product, and setting up of Product for operation.

3.02 Subject to Section 4.00 (Warranties and Exclusions; Exclusive Remedies and Disclaimers), Purchaser shall be responsible for all maintenance of Product.

3.03 FARO shall invoice training with other Products set forth in the Order, when training is complete, if applicable.

3.04 Intentionally Omitted

4.0 Warranties and Exclusions; Exclusive Remedies and Disclaimers

4.01 Subject to Section 4.05, FARO warrants that any Product (but excluding Software and services) shall be free from material defects in workmanship or material under normal conditions of use, service and maintenance. FARO makes no warranty that any Product will operate in an uninterrupted or error free manner.

4.02 Subject to Section 4.05, FARO warrants that any Software shall operate substantially according to written user documentation provided by FARO. FARO makes no warranty that any Software will operate in an uninterrupted or error free manner.

4.03 The warranties set out in paragraphs 4.01 and 4.02 above (together, the "Warranties") shall expire one (1) year after the day that the Product is shipped from FARO (the "Warranty Period"), at the end of the month during which the Product is shipped.

4.04 To properly make a claim under the Warranties, Purchaser must deliver written notice of the claim to FARO during the Warranty Period, at FARO's contact information set forth on the Order, together with a description of such claim in reasonable detail. Within a reasonable time following receipt of such proper notice, FARO shall have Product diagnosed by its service personnel. Nothing herein contained shall be construed as obligating FARO to make service, parts, or repairs available for any claim reported after the expiration of the Warranty Period. If Product is determined by FARO, in its reasonable opinion, to be covered by and in breach of the Warranties, FARO will, as Purchaser's sole and exclusive remedy, repair or adjust Product to the extent determined by FARO to be necessary or, at the option of FARO, will replace Product with a replacement Product, of equal or greater performance, or parts therefor, at no cost to Purchaser, other than the cost of shipping Product to FARO pursuant to Section 4.06. If Product is determined by FARO, in its reasonable opinion, not to be covered by or not to be in breach of the Warranties, Purchaser shall pay the amount that FARO would otherwise charge for an evaluation under a non-warranty service evaluation. For any necessary and not covered repairs, FARO shall provide a quote to Purchaser, which Purchaser can accept or reject at its discretion, and return shipping to Purchaser will be at Purchaser's cost and expense.

4.05 The Warranties shall not apply to or cover:

Any defects in any component of a Product if, in the reasonable opinion of FARO, (i) Product has been improperly stored, installed, operated, or maintained; (ii) the defect was caused by or relates to misuse or extraordinary use of Product, or to use of Product outside the abilities for which Product was designed and manufactured; (iii) Purchaser has permitted unauthorized modifications, additions, deletions, adjustments and/or repair to any Software, hard drive structure, or content, or any other part of Product, or which might otherwise affect Product; or (iv) the defect was caused by, or repairs are

required as a result of, causes external to FARO workmanship or the materials used by FARO. As used herein, "unauthorized" means that which has not been approved and authorized by FARO in writing.

Minor preventive and corrective maintenance, including, but not limited to, replacement of fuses, fan filter cleaning and system clock battery replacement.

Any Product or component which was sold or transferred to any party other than the original Purchaser unless transferred in accordance with Section 4.11 or FARO's prior express written consent is obtained.

Any defect in or related to Product which FARO cannot duplicate with reasonable effort.

Any defect in or related to Product caused by materials, including hardware, software, or data not supplied by FARO.

Any defect caused or resulting from accident; physical, electrical or magnetic stress; failure of electric power, air condition or environmental controls; or use in or with defective or non-compatible equipment, hardware, software or data.

Any defect or problem caused by changes in the operating characteristics of computer systems, hardware, or software developed after Product is delivered.

Any Product exported by Purchaser outside of the country of purchase.

Any demonstration or used Product.

Any services of FARO. ALL SERVICES OF FARO ARE PROVIDED TO PURCHASER "AS IS" WITHOUT WARRANTY OF ANY KIND.

Any Third-Party Product sold or included with the Products. Such Third-Party Products are provided with the manufacturer's warranties, if any, which FARO is permitted to pass on to Purchaser. OTHERWISE, SUCH THIRD-PARTY PRODUCTS ARE PROVIDED TO PURCHASER "AS IS" WITHOUT WARRANTY OF ANY KIND.

4.06 Factory Repairs

Purchaser agrees to ship Product to FARO in the original packing container.

Shipping charges due by Purchaser exclude brokerage fees, duties, taxes and VAT.

IF PRODUCT IS UNDER STANDARD WARRANTY: Purchaser agrees to ship Product to FARO at Purchaser's sole cost and expense. FARO will return the repaired or replacement Product to Purchaser at FARO's sole cost and expense.

IF PRODUCT IS UNDER A SEPARATE PREMIUM SERVICE PLAN: When practical, as determined by FARO in its sole discretion, and subject to availability, FARO will make available to Purchaser substitute component parts or substitute Product, of equal or better performance ("Temporary Replacements"), as appropriate, while Purchaser's Product is undergoing repair. Shipping charges for these Temporary Replacements will be the responsibility of FARO.

IF PRODUCT IS NOT UNDER ANY WARRANTY: Purchaser shall be responsible for the cost of any repair or replacement of any part, Software or Product, together with all shipping charges related to such repair or replacement. All charges shall be estimated and prepaid by Purchaser to FARO prior to commencement of repairs.

4.07 FARO may utilize new or refurbished components of Product to perform any Warranty service.

4.08 Purchaser's sole and exclusive remedy, and FARO's sole and exclusive liability hereunder, with respect to breach of warranty relating to any Product, consists of the obligation to repair, adjust, or replace Product, with a similar or newer product, as provided in Section 4.04.

4.09 DISCLAIMER OF WARRANTIES. THE WARRANTIES SPECIFIED IN THIS SECTION 4.00 ARE THE COMPLETE WARRANTIES BETWEEN FARO AND PURCHASER. THEY SUPERSEDE ALL PROPOSALS, PROMOTIONS, ADVERTISEMENTS, REPRESENTATIONS, OR PRIOR WARRANTIES, VERBAL OR WRITTEN, AND ANY COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THESE WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 4.00, FARO EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION OR QUALITY.

4.10 FARO does not authorize any person (whether natural or corporate) to assume for FARO any liability in connection with or with respect to Product. No agent or employee of FARO has any authority to make any representation or promise on behalf of FARO, except as expressly set forth herein or in the Order, or to modify the terms or limitations of the Warranties. No verbal statements shall be binding upon FARO.

4.11 The Warranties extend only to Purchaser and are transferable by Purchaser only under the following conditions:

Product is currently within the Warranty Period;

The new owner is, or becomes, a Certified User; and

FARO Customer Service is informed of and approves of the transfer.

4.12 All claims under the Warranties must originate with Purchaser, or any subsequent owner that becomes a Certified User approved by FARO Customer Service.

4.13 Intentionally omitted.

4.14 Intentionally omitted.

5.0 Limitations of Liability

5.01 In no case shall FARO be liable for any indirect, special, incidental, punitive or consequential damages arising from any cause whatsoever, whether based in contract, tort (including without limitation negligence), strict product liability or any other theory of law (including without limitation theories of equitable relief).

5.02 FARO's maximum aggregate liability arising out of or relating to any Product from any cause whatsoever, whether based in contract, tort (including without limitation negligence), strict product liability or any other theory of law shall not exceed the Purchase Price received by FARO for the Product to which such liability relates. In all cases, FARO's maximum aggregate liability arising out of or relating to an Order shall not exceed the aggregate amounts paid by Purchaser to FARO under such Order. The limitations of liability in this Section do not apply to claims of personal injury, death or intellectual property infringement.

5.03 The limitations of liability in this Section apply even if FARO had notice of the possibility of damages and even if any exclusive remedies fail of their essential purpose. Purchaser acknowledges that FARO has set its pricing in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in these terms and conditions and that the same form an essential basis of the bargain between the parties.

6.0 Design Changes

6.01 Product is subject to changes in design, manufacture and programming between the date of the Order and the actual delivery date. FARO reserves the right to substitute similar products of the same value without prior notification to the Customer.

6.02 FARO reserves the right to implement such changes without Purchaser's consent. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating FARO to include such changes in Product provided to Purchaser.

7.0 Intellectual Property

7.01 As between FARO and Purchaser, FARO owns all ownership in all FARO Intellectual Property, and Purchaser shall not own or acquire any right, title or interest in any FARO Intellectual Property. FARO grants Purchaser only a limited, non-exclusive, non-transferable license to use any Software in object code form only and, unless otherwise set forth in an Order or approved in writing by FARO, only with Product in which such Software is installed or embedded.

7.02 Purchaser acknowledges and agrees that the Products (including Software) contain trade secrets, confidential, and proprietary information of FARO and shall maintain all Products (including Software) as confidential and proprietary information of FARO. Purchaser shall use no less than the same degree of care to avoid misuse or improper disclosure of the trade secrets, confidential, and proprietary information of FARO than Purchaser uses with respect to its own similar information, which shall be no less than a reasonable degree of care. Purchaser shall not, in whole or in part, reproduce or duplicate (other than that which is necessary and incidental to the ordinary use of the Software in compliance with these terms and conditions or for purpose of making one (1) archival or back-up copy of the Software) alter, modify, disassemble, reverse assemble, decompile, reverse compile, reverse engineer, sell, transfer, assign, sublicense, lease, rent or use in connection with a service bureau or to provide services to others, in any manner the Products (and Software), in whole or in part, or permit access to or use thereof by any third-party.

7.03 Purchaser acknowledges that any unauthorized use of the Products (and Software), or any right therein, may result in irreparable harm to FARO, and that FARO shall be entitled to seek damages and/or, injunctive relief from any such unauthorized use.

7.04 Purchaser shall forthwith execute any further assurances in the form of non-disclosure or licensing agreements which may reasonably be required by FARO in connection with the Software.

8.0 Intentionally omitted

9.0 Export

9.01 Purchaser shall not export or re-export any Product in violation of applicable export control law, rules or regulations. Deliveries of these goods, products, Software, technologies or know-how-transfer to countries outside the country of sale or to third parties are subject to authorization by FARO or may be prohibited. U.S.-origin goods, products, software, technologies or know-how-transfer which are of at least ten percent (10%) U.S.-origin are liable to U.S. Export Administration Regulations and export outside the country of sale may be prohibited. All export control obligations associated with a resale shall be borne by the exporter.

10.0 Definitions

10.01 "Certified User" means any person who has completed at least one full session of product-specific training for Product.

10.02 "FARO" and "FARO Customer Service" means FARO Technologies, Inc.

10.03 "FARO Intellectual Property" means all intellectual property rights relating to any Product, including without limitation, patents, copyrights, trademarks, trade secrets, and know-how, and any derivative works, improvements, modifications, repairs, maintenance, enhancements, and updates of any Product.

10.04 "Purchaser" means the party buying Product and who is legally obligated under the Order.

10.05 "Software" means all computer programs, disk drive directory organization and content, including without limitation the devices containing such computer programs, disk drive directory organization, and content, sold pursuant to the Order.

10.06 "Purchase Price" means the agreed-upon price of Product set forth in the Order.

10.07 "Third-Party Product" shall mean any equipment, products, Software, or services of a third-party that FARO sells or makes available to Purchaser under an Order.

10.08 "Product" means equipment, Software, other products or services to the Purchaser.

EXHIBIT D

Software License Agreement

BEFORE INSTALLING, COPYING, DOWNLOADING, ACCESSING, OR OTHERWISE USING THE SOFTWARE, YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. INSTALLING, COPYING, DOWNLOADING, ACCESSING, OR OTHERWISE USING THE SOFTWARE INDICATES THAT YOU HAVE READ AND UNDERSTAND THIS SOFTWARE LICENSE AGREEMENT, AND THAT YOU AGREE TO BE BOUND BY ALL THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH THEM, DO NOT INSTALL, COPY, DOWNLOAD, ACCESS, OR OTHERWISE USE THE SOFTWARE.

I. Definitions

1.1 Agreement. "Agreement" shall mean this Software License Agreement.

1.2 Licensed Software. "Licensed Software" shall mean the computer software, in machine-readable, object code form only, owned and distributed by FARO via CD ROM, the Internet, or other distribution mechanism, including any Upgrades to such Licensed Software that may be provided by FARO pursuant to this Agreement. Licensed Software does not include third party software even if it is included in products supplied by FARO.

1.3 Licensed Software Materials. "Licensed Software Materials" shall mean any materials related to the Licensed Software and provided by FARO hereunder for use in connection with the Licensed Software.

1.4 Software. "Software" shall mean the Licensed Software and Licensed Software Materials.

II. License Grant.

2.1 License. Subject to compliance with the terms of this Agreement, FARO grants, and You accept, a non-exclusive, non-transferable, limited license to use the Software for internal business purposes only on a single computer by one user at a time.

2.2 Reservation of Rights. FARO shall retain all right, title, copyright, trade secrets, patents and other proprietary rights in and to the Software, and all modifications, enhancements and any derivative works thereof, regardless of origin. You do not acquire any rights, express or implied, in the Software or derivative works thereof, other than those specified in this Agreement, and all rights in and to the Software that are not expressly granted herein are reserved to FARO.

2.3 Copies. You may make one (1) copy of the Licensed Software, provided that such copy is used exclusively by You and solely for archival purposes. Except as set forth in this Section II (License Grant), You shall not use, print, copy, translate, or display the Software, in whole or in part. You shall not copy the Licensed Software Materials without FARO's prior written consent. You shall include, and shall under no circumstances remove, FARO's and its licensor's (if any) copyright, trademark, service mark and other proprietary notices on any complete or partial copies of the Software in the same form and location as the notice appears in the original.

2.4 Modifications. You shall not, and will not permit others to, modify, adapt, translate code, reverse engineer, decompile, disassemble or otherwise attempt to create derivative works from the Licensed Software, otherwise alter the Licensed Software, or discover its source code.

2.5 Compliance with Applicable Laws. You shall at all times comply with all foreign, federal, state

and local laws, whether in the form of statutes, regulations, rules, standards, directives, guidelines, judicial or administrative decisions, or any other federal, state or local action having the effect of law.

2.6 Audit Right. FARO shall have the right, upon reasonable notice during business hours, to audit your use of the Software for purposes of evaluating your compliance with this Agreement.

2.7 Metering Devices. The Licensed Software may contain technology-based metering devices and passive restraints to regulate usage. For example, the Licensed Software may contain a license file limiting use to the licensed number of concurrent users or named users or may temporarily restrict usage until license and other fees have been paid in full. You acknowledge that such passive restraints and metering devices are a reasonable method to ensure compliance with the license and have been factored into the license and other fees and the Agreement as a whole. You agree that you will not circumvent, override, or otherwise bypass such metering devices and passive restraints that regulate the use of the Licensed Software.

2.8 Maintenance Package. A separate maintenance package for the Licensed Software is available for purchase from FARO at a standard list price (the "Maintenance Package"). If you have selected and have paid for the Maintenance Package, then the Limited Warranty under Section 3.1 shall be extended for an extended warranty period (the "Extended Warranty Period") which shall expire upon the expiration of the term of the Maintenance Package or at any time that You fail to pay any amount due in respect of the Maintenance Package. In addition, if You have a current Maintenance Package in good standing at the time of release of any enhancement, upgrade or modification of the Software (including any new version of the Licensed Software) (each an "Upgrade"), You shall be entitled to any such Upgrade without additional charge. If You do not have a current Maintenance Package in good standing at the time of the release of an Upgrade, then you acknowledge that you are not entitled to any such Upgrade.

III. Limited Warranty

3.1 Licensed Software Performance. FARO warrants that, for a period of thirty (30) days following the delivery of the Licensed Software to you (the "Standard Warranty Period"), the Licensed Software, as delivered, will substantially conform to the Licensed Software Materials provided by FARO to you, when properly used in the operating environment specified by FARO (the "Limited Warranty").

3.2 If, during the Warranty Period (or Extended Warranty Period if You have a Maintenance Package as set forth in Section 2.8), you notify FARO of any non-compliance with the Limited Warranty occurring during such period, FARO will, in its sole option and discretion: (a) use commercially reasonable efforts to provide the programming services necessary to correct any verifiable non-compliance in the License Software; or (b) replace any nonconforming Licensed Software; or (c) terminate this Agreement in whole or in part, and refund to you the amounts paid for the nonconforming Licensed Software (provided that during the Extended Warranty Period the maximum amount subject to refund shall be the amount paid for the Maintenance Package). FARO does not guarantee results or represent or warrant that all errors or defects will be corrected. THE FOREGOING STATES YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO NONCOMPLIANCE WITH THE LIMITED WARRANTY IN THIS SECTION III (LIMITED WARRANTY).

3.3 Warranty Disclaimer: EXCEPT FOR THE LIMITED WARRANTY CONTAINED IN SECTION 3.1 (AS EXTENDED IN TIME FOR PURCHASERS OF A MAINTENANCE PACKAGE), FARO DISCLAIMS ANY AND ALL WARRANTIES RELATED TO THE SOFTWARE WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, INTEROPERABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING. FARO DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR THAT USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. WITHOUT LIMITING THE FOREGOING, FARO DOES NOT WARRANT THE CORRECTNESS OF TEXT DISPLAYED BY THE SOFTWARE IN LANGUAGES OTHER THAN ENGLISH. IT IS YOUR RESPONSIBILITY TO CONFORM TO FARO'S STATED HARDWARE AND OPERATING SYSTEM REQUIREMENTS.

IV. Intentionally Omitted

V. Intentionally Omitted

VI. Limitation Of Remedies And Liability

6.1 Selection and Use of Software. You accept sole responsibility for 1) the selection of the Software to achieve your intended results; 2) the installation of the Software (unless installed by FARO); 3) the use of the Software; 4) the results obtained from Software and the use of those results; and 5) lost or damaged data and the adoption of procedures and safeguards (e.g., regular data backups) to prevent such loss or damage. You also accept sole responsibility for the selection and use of, and results obtained from, any other programs, programming, equipment or services used with the Software. You accept sole responsibility for all loss, claim, liability, or damage, and related costs and expenses arising directly or indirectly out of or in any way related to your own fault or negligence.

6.2 CONSEQUENTIAL DAMAGE WAIVER. IN NO EVENT SHALL FARO BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ASSOCIATED WITH LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF DATA OR LOSS OF PROFITS).

6.3 LIMITATION ON DAMAGES. IN NO EVENT SHALL FARO BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID TO FARO BY YOU IN RESPECT OF THE SOFTWARE ITEM TO WHICH THE DEFAULT RELATES, EXCEPT FOR CLAIMS OF PERSONAL INJURY, DEATH OR INTELLECTUAL PROPERTY INDEMNIFICATION.

6.4 BASIS OF THE AGREEMENT. THE ABOVE LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF FARO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. You acknowledge that FARO has set its prices and entered into this Agreement in reliance upon the limitations of damages, waiver of consequential damages and disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between you and FARO.

VII. Intentionally Omitted

VIII. Protection and Security of Software

8.1 Confidentiality. You acknowledge that the ideas, methods, techniques and expressions thereof contained in the Software or disclosed or delivered through the provision of services hereunder (collectively, "FARO Confidential Information") constitute confidential and proprietary information belonging to FARO, the unauthorized use or disclosure of which would be damaging to FARO. You agree to hold the Software and FARO Confidential Information in strictest confidence, disclosing same only to your employees (excluding independent contractors) with a need to know and to use such information only for the purposes authorized by this Agreement. You are responsible for and agree to take all reasonable precautions, by instruction, agreement or otherwise, to ensure that your employees who are required to have access to such information in order to perform under this Agreement, are informed that the Software and FARO Confidential Information are confidential proprietary information belonging to FARO and to ensure that they make no unauthorized use or disclosure of such information. You may disclose said materials if you are required to do so pursuant to a governmental agency or court of law so long as you provide FARO with written notice of such request prior to such disclosure and cooperates with FARO to obtain a protective order.

8.2 Disposal. Prior to disposing of any media reflecting or on which is stored or placed any Software, you shall ensure that such Software thereon or therein have been erased or otherwise destroyed.

8.3 Equitable Relief. You recognize the possibility that no remedy at law for damages will be adequate to fully compensate FARO for the breach of the covenants in this Section VIII. Therefore, FARO shall be entitled to seek temporary injunctive relief and that such injunctive relief shall in no way limit any other remedies FARO may have as a result of breach by you of the covenants contained herein.

IX. Reporting.

9.1 Customer Experience Improvement. You agree that the Software may send at random or specific intervals reports to FARO including information about your hardware configuration, the performance of the Software, the usage rate of the Software, including its features, and other data necessary to enable FARO to improve performance and functionality of the Software in future releases.

9.2 Error Reporting. You agree that the Software may send error reports to FARO if errors occur during the operation of the Software. FARO shall use the error reports to improve the reliability and functionality of the Software. The error reports may include information about your hardware configuration, the performance of the software when an error occurred, etc.

9.3 Confidentiality of Reporting Data. FARO shall treat all information transmitted to FARO for customer experience improvement or error reporting as confidential. All error reports received by FARO shall be stored with limited access by FARO employees.

9.4 Anonymity. The data transmitted to FARO for customer experience improvement or error reporting will not contain any information that identifies you. There are no surveys to complete, and it all happens automatically. You should not be interrupted by the collection of the data or information. You should experience no loss in performance through this process. If your computer is not connected to the Internet, the data will be stored, space permitted, and transmitted once your computer is connected to the internet. If no space is available for storage of the data, the data will be discarded. FARO does not share this information with other companies; it is used only by FARO.

9.5 Disablement. If you choose, you can disable the collection and transmission of this information to FARO in the Software.

X. Miscellaneous.

10.1 Assignment. Neither party may sublicense, assign or transfer this Agreement or the Software without prior written consent of the other. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations hereunder without prior written consent of the other party is null and void.

10.2 Export Restrictions. The Software is licensed for use in the specific country authorized by FARO. You may not export the Software to another country without FARO's written permission and payment of any applicable country specific surcharges. You agree to comply fully with all relevant export laws and regulations of the United States and foreign nations in which the Software will be used ("Export Laws") to ensure that neither the Software nor any direct product thereof are (a) exported, directly or indirectly, in violation of any Export Laws; or (b) are intended to be used for any purposes prohibited by the Export Laws. Without limiting the foregoing, you will not export or re-export the Software: (a) to any country to which the United States or European Union has embargoed or restricted the export of goods or services or to any national of any such country, wherever located, who intends to transmit or transport the Software back to such country; (b) to any user who you know or have reason to know will utilize the Software in the design, development or production of nuclear, chemical or biological weapons; or (c) to any user who has been prohibited from participating in export transactions by any federal or national agency of the U.S. government or European Union.

10.3 U.S. Government Restricted Rights. The Software is a "commercial item" as that term is defined at 48 CFR 2.101(October 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 (September 1995), and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and 48 CFR 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.