

# **End-User License Agreement for FARO Software Solutions 2019-2023**

**("FARO EULA")**

Version XX



[www.farosolutions.com](http://www.farosolutions.com)

## **1. DEFINITIONS**

Capitalized terms used in this document are defined in the Glossary.

## **2. USAGE RIGHTS AND RESTRICTIONS**

### **2.1 *Grant of Rights.***

FARO Software Solutions LLC (hereafter called "FARO") grants to End-User Public Entity Customer (hereafter called "Customer") a non-exclusive, non-transferable and world-wide right to use the FARO Subscription License ("Subscription License") (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal government operations. Permitted uses and restrictions of the Subscription License also apply to Cloud Materials and Documentation.

### **2.2 *Authorized Users.***

Customer may permit Authorized Users to use the Subscription License. Usage is limited to the Usage Metrics and volumes stated in the Order Form and/or the Statement of Support Services.

Customer is responsible for breaches of the Agreement caused by Authorized Users.

### **2.3 *Acceptable Use Policy.***

With respect to the Subscription License Service, Customer will not:

- (a) disassemble, decompile, reverse-engineer, copy, translate or make derivative works,
- (b) transmit any content or data that is unlawful or infringes any intellectual property rights, or
- (c) circumvent or endanger its operation or security.

### **2.4 *Verification of Use.***

Customer shall monitor its **own** use of the Subscription License to ensure use within the permissions, conditions, and constraints of the license and report to FARO any excess consumption or utilization. At a minimum, this applies for scope of operation, access by personnel, and system capacity provided under the license subscription agreement. Any variation beyond what is accounted for in the subscription license agreement and/or the FARO provided statement of support services shall be the responsibility of the Customer and may be invoiced directly or indirectly (via an approved FARO Reseller) for payment.

FARO may additionally monitor this use and report metrics or consumption data to the Customer as part of quality, capacity, and compliance activities.

## **2.5**    *Suspension of Subscription License.*

FARO may suspend use of the Subscription License if continued use may result in material harm to the Subscription License or its users. FARO will promptly notify Customer of the suspension.

FARO will limit the suspension in time and scope as reasonably possible under the circumstances.

## **2.6**    *Third Party Services, Compatibility Models and Implied Acceptance.*

The Subscription License may include integrations with services (e.g., internet and cloud) made available by third parties (other than FARO or its Affiliates) that are accessed through the Subscription License and subject to terms and conditions with those third parties.

In addition, FARO Software Solutions allows customers to make certain decisions regarding licensed software that will be utilized by FARO with a solution, scope, or other task order. FARO describes this is a "compatibility model" which differs from non-compatibility model situations where FARO selects all components itself based on stated requirements provided by Customer. Accordingly, for any Subscription License or "buy on behalf" scenario where a customer has provided preferences for or acknowledgment (i.e., compatibility model) of a third party (e.g., AWS, Microsoft, Google, Oracle, etc.) licensed software, products, or services that exists within or relate to the FARO customer agreement, support services agreement, ordering documents, and/or License, the Customer is not only accepting and agreeing to the FARO EULA (this document), but also acknowledging and agreeing to any applicable end user agreement required by the third party.

Further, the Customer acknowledges and accepts that any constraint or compromise (including limited performance, functionality, technical capability, or capacity) that such EULA, terms, agreements, or performance by third party may place on FARO in the delivery and/or support of FARO Solution to Customer or other obligations to the Customer shall be accepted without negotiation or exception.

# **3.    RESPONSIBILITIES**

## **3.1**    *Provisioning.*

FARO provides access to the Subscription License as described in the Agreement.

## **3.2**    *Support.*

FARO provides support for the Subscription License as referenced in the Order Form and/or the Statement of Support Services.

## **3.3**    *Security.*

FARO uses reasonable security technologies in providing the Subscription License. As a data processor, FARO will implement technical and organizational measures referenced in the Order

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Form to secure personal data processed in the Subscription License in accordance with applicable data protection law.

### 3.4 *Modifications.*

- (a) The Subscription License and FARO Policies may be modified by FARO. FARO will inform Customer of modifications by email, the support portal, release notes, documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Subscription License, which Customer may use subject to the then-current Supplement and Documentation.
- (b) If Customer establishes that a modification made under Section 3.4(a) is not solely an enhancement and materially reduces the Subscription License, Customer may request to negotiate the proposed modification language applicability to its subscriptions to the affected Subscription License by providing written notice to FARO within thirty days after receipt of FARO's informational notice.

### 3.5 *Analyses.*

FARO or FARO Affiliates may create analyses utilizing, in part, Customer Data and information derived from Customer's use of the Subscription License and Professional Services. Analyses will anonymize and aggregate information and will be treated as Cloud Materials. Examples of how analyses may be used include: optimizing resources and support; research and development; automated processes that enable continuous improvement, performance optimization and development of new FARO products and services; verification of security and data integrity; internal demand planning; and data products such as industry trends and developments, indices and anonymous benchmarking.

## 4. CUSTOMER AND PERSONAL DATA

### 4.1 *Customer Data.*

Customer is responsible for the Customer Data and entering it into the Subscription License. Customer grants to FARO (including its Affiliates and subcontractors) a nonexclusive right to process Customer Data solely to provide and support the Subscription License.

### 4.2 *Personal Data.*

Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

### 4.3 *Security.*

Customer will maintain reasonable security standards for its Authorized Users' use of the Subscription License.

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### 4.4 *Access to Customer Data.*

- (a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case FARO and Customer will find a reasonable method to allow Customer access to Customer Data.
- (b) Before the Subscription Term expires, Customer may use FARO's self-service export tools (as available) to perform a final export of Customer Data.
- (c) At the end of the Agreement, FARO will delete the Customer Data remaining on servers hosting the Subscription License unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (d) In the event that a service is provided at no cost to the customer, there shall be no reliance upon FARO to provide access to the data, nor any SLA applicable to data access. This applies to proofs of concept, demonstrations, or any unlicensed deployment which may be shut down or deleted by FARO at any time.
- (e) In the event of third-party legal proceedings relating to the Customer Data, FARO will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

## 5. FEES AND TAXES

### 5.1 *Fees and Payment.*

- (a) Customer will pay fees as stated in the Order Form. After prior written notice, FARO may suspend Customer's use of the Subscription License until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms (i.e., Purchase Orders) are non-cancellable and fees non-refundable.
- (b) **Discounts.** Discounts below any agreed discount rates in the State contract (e.g., software license program or schedule) are understood to be special pricing for a specific transaction. Any discount offered to a customer is a promise for the license term period of the ordering documents (including at a minimum the authorized quote and purchase order). Any extension or renewal of the license beyond the cited term does not have an implied promise of a discount. It is sole responsibility of the customer to seek any new or continued discount in updated order documents (including at a minimum the authorized quote and purchase order).
- (c) Customer rights to invoke terms and conditions are wholly dependent on the customer being current on its license fees to FARO and in good standing.

## **5.2 Taxes.**

Fees and other charges imposed under an Order Form will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than FARO's income and payroll taxes. Customer must provide to FARO any direct pay permits or valid tax-exempt certificates prior to signing an Order Form. If FARO is required to pay taxes (other than its income and payroll taxes), Customer will reimburse FARO for those amounts and indemnify FARO for any taxes and related costs paid or payable by FARO attributable to those taxes, including excise taxes.

## **5.3 Authorized Reseller Relationship.**

Section 5.3, in its entirety, applies only when a FARO Authorized Reseller pays for one or more licenses on behalf of an End User.

### **(a) Independence of Authorized Reseller.**

Authorized Reseller is not an agent of FARO. It is an independent entity with no authority to bind FARO or to make representations or warranties on FARO's behalf.

### **(b) Authorized Reseller is not a FARO proxy.**

FARO will not be liable for reasonably relying on the accuracy and reliability of written information provided by Authorized Reseller in making any decision that would give FARO ground to suspend the Subscription License or terminate the Agreement. Such interactions must occur between the Customer and FARO directly.

### **(c) Non-Payment by Authorized Reseller.**

FARO may at its sole discretion suspend Customer's use of the Subscription License and/or terminate the Agreement if Authorized Reseller fails to pay any fee or other amount payable by it on its due date.

### **(d) Termination of Authorized Reseller relationship or orders relating to Customer.**

If (i) Authorized Reseller terminates all orders relating to the Customer or (ii) FARO terminates any of Authorized Reseller's orders relating to the Customer for good cause or (iii) the partnership between FARO and Authorized Reseller relating to the sale of the Subscription License is terminated, FARO may (depending on Customer's choice):

- (i) directly provide the affected Subscription License to the Customer pursuant to FARO's then-current EULA for FARO Subscription Licenses for mutually agreed subscription fees and extended term; or
- (ii) directly accept the existing EULA to complete the term of the pre-paid subscription fees.

### **(e) No representations or warranties.**

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FARO makes no representations or warranties as to such Authorized Reseller, or any other third party, related to the performance of the products or services of such entities, and fully disclaims any such warranties in accordance with Section 7.

## 6. TERM AND TERMINATION

### 6.1 *Term.*

The Subscription License Term is for one year unless:

- (a) documented in the order documents (including at a minimum the authorized quote and purchase order); and
- (b) documented in a FARO provided Statement of Support Services that specifically defines an alternative Subscription License Term.
- (c) Note: A general term date of a Purchase Order or Order Document alone does not define a license term.
- (d) Note: If a customer continues using or accessing Subscription Licenses beyond the stated Term, the Customer is subject to Subscription License termination by FARO or, if not terminated by FARO, the Customer is subject to fees as defined in Section 6.4. (d).

### 6.2 *Termination.*

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach (and established efforts to identify and remedy the breach unsuccessfully), or
- (b) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.
- (c) Note: Termination for non-appropriation is applicable only to terminate future budget year obligations in an Agreement, not current or past budget period obligations (e.g., in the third year of a five-year agreement, a government entity may terminate year 4 and 5 if the future year's appropriations are non-appropriated, but it may not terminate its obligation for the third year).
- (d) Note: If a government Customer contract takes precedence over this EULA and includes a termination for convenience clause or other termination conditions, any credits or obligations for prepaid services shall be addressed in accordance with Section 6.3

### 6.3 *Credits and Future Payments.*

For termination by Customer, Customer will be entitled to:

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- (a) No refund or credit for unused services for a remaining subscription period less than one (1) year. If the subscription period remaining is beyond one (1) year, the subscription fees will be halted at the end of the complete year period.
- (b) A release from the obligation to pay fees due for periods after the effective date of termination only for a termination as defined in 6.2 (a).
- (c) Termination for cause when subscriptions are prepaid results in credits for other FARO services at standard contract rates.
- (d) Note: Regardless of term or termination timing, any discounts under Section 5.1. (b) that may have been earned by the Customer will be negated and the Customer shall be responsible for the license period fees at the standard (i.e., undiscounted) subscription rate.

### 6.4 *Effect of Expiration or Termination.*

Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to use the Subscription License and all FARO Confidential Information will end,
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.
- (d) Note: If a Customer continues to utilize the Subscription License beyond the expiration or termination period, the Customer will be responsible (via an applicable Government claims or Government Dispute resolution process) for usage fees (Section 5.1) at the highest permissible contract rate unless otherwise agreed to in writing by FARO.
- (e) Customer data return by FARO shall include data elements in their unaltered formats from the FARO system or systems. Data may include a data dictionary or other summary document of the data provided, but will not, unless expressly defined in the order documents (including at a minimum the authorized quote and purchase order), any other artifacts or insights such as process diagrams, architecture schematics, and/or configurations. These other artifacts are considered trade secrets and shall be retained by FARO exclusively.
- (f) Customer data returned to the Customer by FARO, destroyed by FARO, or otherwise removed from the system by FARO shall include all operational business data obtained from system processing with the exception of security, compliance and access logs that may be required for record keeping. FARO shall be expressly permitted to retain such data for its purposes unless such data is known to contain confidential information and non-retention is agreed to in writing by Customer and FARO. There shall be no



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requirements for the return, destruction, or removal of non-production data that may have been used for development or testing purposes but which does not represent confidential data. Customer may submit a return request in writing if such data is known to contain confidential information. Any data return following such request will require express agreement in writing by Customer and FARO.

- (g) The customer further warrants that the customer shall not attempt or complete any effort that would be interpreted as replicating, copying, duplicating, or otherwise using the customer experience design, look & feel, and approaches (including but not limited to interface formats) for a period of no less than two (2) years after the final termination of the customer agreement with FARO. If it is found that the customer has done so, license fees at standard contract rates will be applied from the contract end date to the date where either the use is permitted by FARO expressly in writing, a settlement agreement is executed related to the use, or the license is repurchased to cover the period in question.
- (h) Termination or stop work order costs shall be the responsibility of the customer and shall not be less than 90 days of license fees for the solution services being terminated (unless the termination occurs in the last 90 days of the contract). Unless otherwise documented in the order documents (including at a minimum the authorized quote and purchase order), the parties agree that reasonable costs associated with the termination order (e.g., stop work order) include at a minimum the ongoing license subscription cost until all termination activities are entirely complete (e.g., data has been returned, validated by customer, and deleted by FARO). If the costs shall exceed the ongoing license subscription costs after the termination order, FARO shall provide summary explanations for the additional costs. The cost incurred shall not exceed the remaining cost of the license subscription term.

### 6.5 *Survival.*

Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.

## 7. **WARRANTIES**

### 7.1 *Compliance with Law.*

Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of FARO, the operation of FARO's business as it relates to the Subscription License, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Subscription License.

## **7.2**    *Good Industry Practices.*

FARO warrants that it will provide the Subscription License:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Subscription License

## **7.3**    *Remedy.*

Customer's sole and exclusive remedies and FARO's entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient Subscription License, and
- (b) if FARO fails to re-perform, Customer may seek Subscription License performance remedies as defined and applicable in the Service Level Agreement (SLA) document.

## **7.4**    *System Availability.*

- (a) FARO warrants to maintain an average monthly system availability for the production system of the Subscription License as defined in the applicable Service Level Agreement or Supplement.
- (b) Customer's sole and exclusive remedy for FARO's breach of the SLA is the issuance of a credit in the amount described in the SLA. Customer will follow FARO's posted credit claim procedure. When the validity of the service credit is confirmed by FARO in writing (email permitted), Customer may apply the credit to a future invoice for the Subscription License.
- (c) In the event FARO fails to meet the SLA (i) for four consecutive months, or (ii) for five or more months during any twelve months period, or (iii) at a system availability level below the lowest acceptable SLA level daily for a complete calendar month, Customer may terminate its subscriptions for the affected Subscription License by providing FARO with written notice within thirty days after the failure.

## **7.5**    *Warranty Exclusions.*

The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Subscription License is not used by Customer in accordance with the Agreement or Documentation,
- (b) any non-conformity is caused by Customer, or by any product or service not provided by FARO, or
- (c) the Subscription License was provided for no fee.

## **7.6**     *Disclaimer.*

Except as expressly provided in the Agreement, neither FARO nor its subcontractors make any representation or warranties, express or implied, statutory or otherwise, regarding any matter, including the merchantability, suitability, originality, or fitness for a particular use or purpose, non-infringement or results to be derived from the use of or integration with any products or services provided under the Agreement, or that the operation of any products or services will be secure, uninterrupted or error free. Customer agrees that it is not relying on delivery of future functionality, public comments or advertising of FARO or product roadmaps in obtaining any Subscription Licenses.

## **8.     THIRD PARTY CLAIMS**

### **8.1**     *Claims Brought Against Customer.*

- (a) FARO will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer's and its Affiliates' use of the Subscription License infringes or misappropriates a patent claim, copyright, or trade secret right. FARO will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement FARO enters into) with respect to these claims.
- (b) FARO's obligations under Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) use of the Subscription License in conjunction with any product or service not provided by FARO, or (iii) use of the Subscription License provided for no fee.
- (c) In the event a claim is made or likely to be made, FARO may (i) procure for Customer the right to continue using the Subscription License under the terms of the Agreement, or (ii) replace or modify the Subscription License to be non-infringing without a material decrease in functionality. If these options are not reasonably available, FARO or Customer may terminate Customer's subscription to the affected Subscription License upon written notice to the other.

### **8.2**     *Claims Brought Against FARO.*

Customer will defend FARO against claims brought against FARO, its Affiliates and subcontractors by any third party related to Customer Data. Customer will indemnify FARO against all damages finally awarded against FARO, its Affiliates and subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

### **8.3**     *Third Party Claim Procedure.*

- (a) The party against whom a third-party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.

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- (b) The party that is obligated to defend a claim will have the right to fully control the defense.
- (c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

### 8.4 *Exclusive Remedy.*

The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or misappropriation of third-party intellectual property rights.

## 9. **LIMITATION OF LIABILITY**

### 9.1 *Unlimited Liability.*

Neither party will exclude or limit its liability for damages resulting from:

- (a) the parties' obligations under Section 8.1(a) and 8.2,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
- (d) death or bodily injury arising from either party's gross negligence or willful misconduct, or
- (e) any failure by Customer to pay any fees due under the Agreement.

### 9.2 *Liability Cap.*

Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or FARO's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve-month (12) period will not exceed the annual subscription fees paid for the applicable Subscription License directly causing the damage for that twelve-month period. Any "twelve-month period" commences on the Subscription Term start date or any of its yearly anniversaries.

### 9.3 *Exclusion of Damages.*

Subject to Section 9.1:

- (a) neither party (nor its respective Affiliates or FARO's subcontractors) will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good will or business profits, work stoppage or for exemplary or punitive damages, and
- (b) FARO will not be liable for any damages caused by any Subscription License provided for no fee.

#### **9.4 Risk Allocation.**

The Agreement allocates the risks between FARO and Customer. The fees for the Subscription License and Consulting Services reflect this allocation of risk and limitations of liability.

### **10. INTELLECTUAL PROPERTY RIGHTS**

#### **10.1 FARO Ownership.**

FARO, their Affiliates or licensors own all intellectual property rights in and related to the Subscription License, Cloud Materials, Documentation, Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to FARO and its licensors.

#### **10.2 Customer Ownership.**

Customer retains all rights in and related to the Customer Data. FARO may use Customer provided trademarks solely to provide and support the Subscription License.

#### **10.3 Non-Assertion of Rights.**

Customer covenants, on behalf of itself and its successors and assigns, not to assert against FARO, their Affiliates or licensors, any rights, or any claims of any rights, in any Subscription License, Cloud Materials, Documentation, or Services.

### **11. CONFIDENTIALITY**

#### **11.1 Use of Confidential Information.**

- (a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in Section 11. Customer will not disclose the Agreement or the pricing to any third party.
- (b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to Section
- (c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information.

### **11.2 Exceptions.**

The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

- (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (b) is generally available to the public without breach of the Agreement by the receiving party,
- (c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or
- (d) the disclosing party agrees in writing is free of confidentiality restrictions.

### **11.3 Publicity.**

Either party may disclose any information publicly available in relation to FARO agreements with a Government entity (e.g., existence and value of current or past agreements). For information not publicly available in relation to a Government entity or information in relation to any non-governmental entity, neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that FARO may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of FARO's marketing efforts (including reference calls and stories, press testimonials, site visits). Customer agrees that FARO may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with FARO.

## **12. MISCELLANEOUS**

### **12.1 Severability.**

If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability will not affect the other provisions of the Agreement.

### **12.2 No Waiver.**

A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

### **12.3 Signature.**

Electronic signatures that comply with applicable law are deemed original signatures.

### **12.4 Regulatory Matters.**

- (a) FARO Confidential Information is subject to export control laws of the United States. Customer will not submit FARO Confidential Information or parts thereof to any

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government agency for licensing consideration or other regulatory approval, and will not export, re-export or import any FARO Confidential Information or parts thereof to countries, persons or entities if prohibited by export laws.

- (b) Neither FARO nor any of its Affiliates assumes any responsibility or liability:
  - (i) for any delay caused in the delivery and/or granting of access to any or all FARO Confidential Information of parts thereof due to export or import authorizations or both having to be obtained from the competent authorities;
  - (ii) if any required authorization, approval or other consent for the delivery of and/or granting of access to any or all FARO Confidential Information or parts thereof cannot be obtained from the competent authorities;
  - (iii) if the delivery of and/or granting of access to any or all FARO Confidential Information or parts thereof is prevented due to applicable Export Laws; and
  - (iv) if access to Subscription Licenses, Services or other services has to be limited, suspended or terminated due to applicable Export Law.
- (c) FARO may terminate this Agreement with thirty days prior written notice if FARO or any of its Affiliates may not deliver or grant access to the FARO Confidential Information to Customer due to an embargo, trade sanction or other comparable restrictive measure, which is expected to be in place for six months or longer.

### **12.5 Notices.**

All notices will be in writing and given when delivered to the address set forth in an Order Form with copy to the legal department. Notices by FARO relating to the operation or support of the Subscription License and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order Form.

### **12.6 Assignment.**

Without FARO's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. FARO may assign the Agreement to any FARO Affiliates.

### **12.7 Subcontracting.**

FARO may subcontract parts of the Subscription License support or Services to FARO Affiliates and to third parties. FARO Affiliates may further subcontract parts of the Subscription License support or Services to third parties. FARO is responsible for breaches of the Agreement caused by its subcontractors.

### **12.8 Relationship of the Parties.**

The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

### **12.9 Force Majeure.**

Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

### **12.10 Governing Law.**

The Agreement and any claims relating to its subject matter will be governed by and construed under the laws of the State of California, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located in the State of California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement. Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

### **12.11 End-User License Agreement (EULA).**

- (a) The FARO EULA shall remain in full effect except where specifically in conflict with an agreed superseding term or condition. Notwithstanding any superseding agreements, the substance of FARO EULA shall remain in effect for items not specifically affected by the agreed order of precedence. Specifically, this means that any clarifications, terms, and conditions of the FARO EULA that can co-exist with the customer overriding terms shall remain.
- (b) Unless a version of the FARO end user license agreement is specifically cited in the order documents (including at a minimum the authorized quote and purchase order), it is mutually understood and accepted that the EULA that is in effect is the current one as published on FARO's website at <https://www.farosolutions.com/farocloudeula>. Note: This EULA agreement is amended from time to time to better reflect the working relationship of FARO and its customers. We encourage customers to review it regularly.
- (c) If the customer invokes a term or condition that takes precedent over the FARO EULA and there are any stipulations or inferences to a third-party authority (or control agency) related to exercising the term or condition, the customer shall at the time of the intended invocation provide written evidence that said stipulations or authority has been granted or delegated to the customer. Until such evidence is provided, the term or condition invocation will be considered incomplete.

### **12.12 Entire Agreement.**

- (a) The Agreement constitutes the complete and exclusive statement of the agreement between FARO and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations,



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discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. An Agreement will prevail over terms and conditions of any Customer issued purchase order, which will have no force and effect, even if FARO accepts or does not otherwise reject the purchase order.

- (b) There are no stated Deliverables as part of the FARO and customer agreement, unless specifically cited in the ordering documents (including at a minimum the authorized quote and purchase order). Work products that may be produced or shared with the customer during the course of software subscription support do not constitute
- (c) **Deliverables.** If the customer expects specific progress to be made under the agreement, the specifications of this progress and how it will be measured must be included in the order documents (including at a minimum the authorized quote and purchase order). Absence specific documentation to this effect, it is assumed that normal FARO support services constitute adequate progress during the course of an agreement.

## Glossary

1. **"Affiliate"** of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.
2. **"Agreement"** means an Order Form and documents incorporated into an Order Form.
3. **"Authorized User"** means any individual to whom Customer grants access authorization to use the Subscription License that is an employee, agent, contractor or representative of (a) Customer, (b) Customer's Affiliates, and/or (c) Customer's and Customer's Affiliates' Business Partners.
4. **"Authorized Reseller"** means a legal entity that requires use of a Subscription License in connection with Customer's internal business operations. These may include Value Added Resellers (VARs), Distributors, Service Providers and/or Suppliers of Customer. In cases where a Authorized Reseller is involved, a FARO EULA Acceptance Form must be completed.
5. **"Cloud Materials"** mean any materials provided or developed by FARO (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Subscription License.
6. **"Confidential Information"** means

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- a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
  - b) with respect to FARO: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding FARO research and development, product offerings, pricing and availability.
  - c) Confidential Information of either FARO or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
7. **"Consulting Services"** means professional services, such as implementation, configuration, Custom development and training, performed by FARO's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.
8. **"Customer"** means party who enters into an agreement to order FARO Subscription Licenses for use.
9. **"Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Subscription License or that Customer derives from its use of and stores in the Subscription License (e.g., Customer-specific reports). Customer Data and its derivatives will not include FARO's Confidential Information.
10. **"Documentation"** means FARO's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Subscription License support which is made available to Customer with the Subscription License
11. **"FARO"** means FARO Software Solutions LLC.
12. **"FARO EULA Acceptance Form"** means the "FARO Cloud Service Schedule (for indirect sales)" concluded between FARO and the Customer that references the FARO EULA.
13. **"FARO Policies"** means the operational guidelines and policies applied by FARO to provide and support the Subscription Licenses as incorporated in an Order Form.
14. **"Order Form"** means the ordering document for a Subscription License that references the base contract (e.g., state contracting vehicle).
15. **"Subscription License"** means any distinct, subscription-based, hosted, supported and operated on demand solution provided by FARO under an Order Form
16. **"Subscription Term"** means the term of a Subscription License identified in the applicable Order Form, including all renewals.

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- 17. **"Supplement"** means the supplemental terms and conditions that apply to the Subscription License and that are incorporated in an Order Form.
- 18. **"Usage Metric"** means the standard of measurement for determining the permitted use for a Subscription License as set forth in a FARO EULA Acceptance Form.
- 19. **"Volume"** means the number of times a permitted use case is exercised.

\* For license subscriptions that commenced on or before December 31, 2018, please contact FARO directly ([support@faroconsulting.com](mailto:support@faroconsulting.com)) for inquiries.