



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 6

CONTRACT #: AR2492

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Unisys Corporation (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

The attached FARO PaaS END-USER LICENSE AGREEMENT is made a part of Attachment E

Effective Date of Amendment: The date of last signature on this amendment

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

Christopher Reeve

Oct 30, 2019

[Christopher Reeve \(Oct 30, 2019\)](#)

Contractor's Signature

Date

Christopher Reeve

Contractor's Name (Print)

Title (Print)

STATE OF UTAH

Oct 31, 2019

Director

State of Utah Division of Purchasing

Date

Purchasing Agent	Phone #	e-mail	Contract #
Solomon Kingston	801-538-3228	skingston@utah.gov	AR2492

Unisys Scope to NASPO:

Unisys was awarded the opportunity to provide IaaS, PaaS and SaaS services under the NASPO Cloud Solutions contract. It is our goal to provide meaningful and current services to our clients. Our current and potential NASPO clients are asking Unisys to provide the capability to modernize their legacy mainframe applications to the cloud or enable their mainframe applications to act like cloud services.

The FARO PaaS offering provides our clients the ability to enable legacy applications, like Mainframes applications, to look and act like a Private Cloud through their service layer. Though clients want to modernize from mainframe to cloud, often the budget and time is not available to do so. FARO PaaS enables agencies to modernize at their pace while enabling service and data sharing to other applications in a cloud like fashion with consulting assistance from Cloud Consulting experts. FARO PaaS is the Unisys response to what the market is requesting.

Service Description:

The FARO PaaS solutions specifically targets operational challenges that many Public Sector Agencies have today. The service provides the following attributes:

- PaaS solutions are pre-engineered so there is more configuration than custom development
- Services include cloud hosting, application connectors, as well as a user administration portal
- Agency data remains owned by the Agency throughout the term of your FARO license agreement
- FARO PaaS is hosted in a FedRAMP accredited cloud conforming to NIST 800-53 rev 4 and meets ISO and HIPAA compliance requirements
- Expert Cloud Architects and Consultants

Service Offerings:

- Government Data Hub PaaS
- Forms and Workflow PaaS
- Client Relationship Management
- Cloud DevOps for Agile Government

Service Fee:

Final pricing is dependent on agreement of Statement of Work (SOW), scope and schedule.

Government List Pricing (Annual Subscriptions)

SKU	Title	2019 (Final)	2020*	2021*
FAROHerculesHub2019	Hercules Data Hub & API Gateway	\$ 2,495,000.00	\$ 2,619,750.00	\$ 2,750,737.50
FAROHerc-Arena-2019	Hercules - Arena DevOps Module	\$ 225,000.00	\$ 236,250.00	\$ 248,062.50
FAROMont-Case-2019	Hercules - Case Management Connector Module	\$ 350,000.00	\$ 367,500.00	\$ 385,875.00
FAROHerc-Don-2019	Hercules - Donau Analytics Module	\$ 275,000.00	\$ 288,750.00	\$ 303,187.50
FAROHerc-MFC-2019	Hercules - Makapu'u Mainframe Connector Module	\$ 585,000.00	\$ 614,250.00	\$ 644,962.50
FAROHerc-Porto-2019	Hercules - Porto Workflow Module	\$ 225,000.00	\$ 236,250.00	\$ 248,062.50
FAROHerc-RambRE-2019	Hercules - Ramsgate Business Rules Module	\$ 390,000.00	\$ 409,500.00	\$ 429,975.00
FAROHerc-Sab-2019	Hercules - Sabine Integration Module	\$ 250,000.00	\$ 262,500.00	\$ 275,625.00
FAROHerc-Sambro-2019	Hercules - Sambro Portal	\$ 195,000.00	\$ 204,750.00	\$ 214,987.50
FAROPravCRM22019	Pravia CRM Solution	\$ 1,950,000.00	\$ 2,047,500.00	\$ 2,149,875.00
FAROVermCloud2019	Vermillion Cloud Standard	\$ 125,000.00	\$ 131,250.00	\$ 137,812.50
FAROVermCloud-Exp-2019	Vermillion Cloud - Expansion	\$ 59,500.00	\$ 62,475.00	\$ 65,598.75
FAROVermCloud-HA-2019	Vermillion Cloud - High Availability Expansion	\$ 250,000.00	\$ 262,500.00	\$ 275,625.00
FAROVermCloud-FR-2019	Vermillion Cloud - FedRAMP Expansion	\$ 250,000.00	\$ 262,500.00	\$ 275,625.00

"*" = Government List Pricing for any future year is an estimate until listed as "Final"

END-USER LICENSE AGREEMENT FOR FARO Consulting & Solutions LLC (“FARO EULA”)

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

2.1 *Grant of Rights.*

FARO Consulting & Solutions LLC (hereafter called “FARO”) grants to End-User Customer (hereafter called “Customer”) a non-exclusive, non-transferable and world-wide right to use the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer’s and its Affiliates’ internal business operations. Permitted uses and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

2.2 *Authorized Users.*

Customer may permit Authorized Users to use the Cloud Service. Usage is limited to the Usage Metrics and volumes stated in the Order Form. Access credentials for the Cloud Service may not be used by more than one individual, but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by Authorized Users.

2.3 *Acceptable Use Policy.*

With respect to the Cloud 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 will monitor its own use of the Cloud Service and report any use in excess of the Usage Metrics and Volume. FARO may monitor use to verify compliance with Usage Metrics, Volume and the Agreement.

2.5 *Suspension of Cloud Service.*

FARO may suspend use of the Cloud Service if continued use may result in material harm to the Cloud Service 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 Web Services.

The Cloud Service may include integrations with web services made available by third parties (other than FARO or its Affiliates) that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third-party web services are not part of the Cloud Service and the Agreement does not apply to them.

2.7 Mobile Access to Cloud Service.

Authorized Users may access certain Cloud Services through mobile applications obtained from third-party websites such as Android or Apple app store. The use of mobile applications may be governed by the terms and conditions presented upon download/access to the mobile application and not by the terms of the Agreement.

3.1 Provisioning.

FARO provides access to the Cloud Service as described in the Agreement.

3.2 Support.

FARO provides support for the Cloud Service as referenced in the Order Form.

3.3 Security.

FARO uses reasonable security technologies in providing the Cloud Service. As a data processor, FARO will implement technical and organizational measures referenced in the Order Form to secure personal data processed in the Cloud Service in accordance with applicable data protection law.

3.4 Modifications.

- (a) The Cloud Service 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 Cloud Service, 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 Cloud Service, Customer may request to negotiate the proposed modification language applicability to its subscriptions to the affected Cloud Service 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 Cloud Service and Consulting 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.

4.1 Customer Data.

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

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 Cloud Service.

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 from the Cloud Service.
- (c) At the end of the Agreement, FARO will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement.
- (d) 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.

5.1 Fees and Payment.

Customer will pay fees as stated in the Order Form. After prior written notice, FARO may suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Order Forms are non-cancellable and fees non-refundable.

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.

5.3 *Business Partner Relationship.*

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

(a) **Non-Payment by Business Partner.**

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

(b) **Termination of Business Partner relationship or orders relating to Customer.**

If (i) Business Partner terminates all orders relating to the Customer or (ii) FARO terminates any of Business Partner's orders relating to the Customer for good cause or (iii) the partnership between FARO and Partner relating to the sale of subscription for the Cloud Services is terminated, FARO may (depending on Customer's choice):

- (i) directly provide the affected Cloud Service to the Customer pursuant to FARO's then-current EULA for FARO Cloud Services 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.

(c) **Independence of Business Partner.**

Business Partner 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.

(d) **Business Partner is not a FARO proxy.**

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

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

FARO makes no representations or warranties as to such authorized distributor or 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.

6.1 *Term.*

The Subscription Term is as stated in the Order Form.

6.2 *Termination.*

A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty day period,
- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) 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.

6.3 *Credits and Future Payments.*

For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata credit in the amount of the unused portion of prepaid fees for the specific Cloud Service terminated subscription calculated as of the effective date of termination which may be applied during the same term period to another FARO Cloud Service, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

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 Cloud Service 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.

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.

7.1 *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 Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the Cloud Service.

7.2 *Good Industry Practices.*

FARO warrants that it will provide the Cloud Service:

- (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 Cloud Service

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 Cloud Service, and
- (b) if FARO fails to re-perform, Customer may seek Cloud Service subscription 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 Cloud Service as defined in the applicable Service Level Agreement or Supplement ("SLA").
- (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 Cloud Service.
- (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 Cloud Service 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 Cloud Service is not used 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 Cloud Service 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 subscriptions for any Cloud Service.

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 Cloud Service 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 Cloud Service in conjunction with any product or service not provided by FARO, or (iii) use of the Cloud Service 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 Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service 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 Cloud Service 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.
- (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.

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 period will not exceed the annual subscription fees paid for the applicable Cloud Service 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 Cloud Service provided for no fee.

9.4 *Risk Allocation.*

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

10.1 *FARO Ownership.*

FARO, their Affiliates or licensors own all intellectual property rights in and related to the Cloud Service, 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 Cloud Service.

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 Cloud Service, Cloud Materials, Documentation, or Services.

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 11.
- (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.

12.1 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 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 Cloud Services, 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 Cloud Service 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 Cloud Service or Services to FARO Affiliates and to third parties. FARO Affiliates may further subcontract parts of the Cloud Service 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 Entire Agreement.

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, 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.

Glossary

- 1.1 **"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.
- 1.2 **"Agreement"** means an Order Form and documents incorporated into an Order Form.
- 1.3 **"Authorized User"** means any individual to whom Customer grants access authorization to use the Cloud Service 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.
- 1.4 **"Business Partner"** means a legal entity that requires use of a Cloud Service 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 Business Partner is involved, a FARO EULA Acceptance Form must be completed.
- 1.5 **"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 Cloud Service.
- 1.6 **"Cloud Service"** means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by FARO under an Order Form.
- 1.7 **"Confidential Information"** means
 - (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.

- 1.8 **"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.
- 1.9 **"Customer Data"** means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include FARO's Confidential Information.
- 1.10 **"Documentation"** means FARO's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.
- 1.11 **"FARO"** means FARO Software Solutions LLC.
- 1.12 **"FARO EULA Acceptance Form"** means the "FARO Cloud Service Schedule (for indirect sales)" concluded between FARO and the Customer that references the FARO EULA.
- 1.13 **"FARO Policies"** means the operational guidelines and policies applied by FARO to provide and support the Cloud Service as incorporated in an Order Form.
- 1.14 **"Order Form"** means the ordering document for a Cloud Service that references the GTC.
- 1.15 **"Partner"** is defined in the FARO EULA Acceptance Form.
- 1.16 **"Subscription Term"** means the term of a Cloud Service subscription identified in the applicable Order Form, including all renewals.
- 1.17 **"Supplement"** means the supplemental terms and conditions that apply to the Cloud Service and that are incorporated in an Order Form.
- 1.18 **"Usage Metric"** means the standard of measurement for determining the permitted use for a Cloud Service as set forth in a FARO EULA Acceptance Form.
- 1.19 **"Volume"** means the number of times a permitted use case is exercised.

FARO Vermillion Cloud™ Service Level Agreement

Last Updated March 1, 2018

This FARO Vermillion Cloud™ Service Level Agreement (this “SLA”) is a policy governing the use of the Included Products and Services (listed below) by you or the entity you represent (“you”) under the terms of the End-User License Agreement for FARO Software Solutions LLC (the “FARO EULA”) between FARO Consulting & Solutions LLC and its affiliates (“FARO”, “us” or “we”) and you. This SLA applies separately to each account using the Included Services. Unless otherwise provided herein, this SLA is subject to the terms of the FARO EULA and capitalized terms will have the meaning specified in the FARO EULA. We reserve the right to change the terms of this SLA in accordance with the FARO EULA.

- FARO Vermillion Cloud™
- FARO Vermillion Cloud™ for Government

FARO has built its advanced cloud architecture using sophisticated tools to provide a high quality of service to our customers. FARO will use commercially reasonable efforts to make the Included Services each available with a Monthly Uptime Percentage (defined below) of at least 99.95%, in each case during any monthly billing cycle (the “Service Commitment”). In the event any of the Included Services do not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.

“Monthly Uptime Percentage” is calculated by subtracting from 100% the percentage of minutes during the month in which any of the Included Services, as applicable, was in the state of “Region Unavailable.” Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any FARO SLA Exclusion (defined below).

“Region Unavailable” and “Region Unavailability” means that, though FARO has multiple cloud regions and your service may be available in one or more regions, the services are concurrently “Unavailable” to you in your region.

“Unavailable” and “Unavailability” mean all of your running FARO Vermillion Cloud™ instances or running tasks, as applicable, have no external connectivity.

A “Service Credit” is a dollar credit, calculated as set forth below, that we may credit back to an eligible account.

Service Credits are calculated as a percentage of the total charges paid by you in the Region affected for the monthly billing cycle in which the Region Unavailability occurred in accordance with the schedule below.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.95% but equal to or greater than 95.0%	5%
Less than 95.0%	10%

We will apply any Service Credits only against future FARO payments otherwise due from you. At our discretion, we may issue the Service Credit to the credit card you used to pay for the billing cycle in which the Unavailability occurred. Service Credits will not entitle you to any refund or other payment from FARO. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the FARO EULA, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide cloud services is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

To receive a Service Credit, you must submit a claim by opening a case with the FARO support team. To be eligible, the credit request must be received by us (via email @ support@FAROconsulting.com) by the end of the second billing cycle after which the incident occurred and must include:

1. the words "SLA Credit Request" in the subject line;
2. the dates and times of each Unavailability incident that you are claiming;
3. the affected FARO Vermillion Cloud™ volume IDs; and
4. your request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then we will issue the Service Credit to you within one billing cycle following the month in which your request is confirmed by us. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

The Service Commitment does not apply to any unavailability, suspension or termination of FARO services or performance issues: (i) that result from a suspension described in Section FARO EULA; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of FARO; (iii) that result from any actions or inactions of you or any third party, including failure to acknowledge a recovery volume; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (v) that result from failures of individual instances or volumes not attributable to Region Unavailability; (vi) that result from any maintenance as provided for pursuant to the FARO EULA; or (vii) arising from our suspension and termination of your right to use FARO Vermillion Cloud™ in accordance with the FARO EULA (collectively, the "FARO SLA Exclusions"). If availability is impacted by factors other than those used in our Monthly Uptime Percentage calculation, then we may issue a Service Credit considering such factors at our discretion.

