

**State of Iowa
Contracts Declaration & Execution (“CD&E”)**

Title of Contract: 3D Laser Scanner (“Agreement”) pursuant to and incorporating by reference Request for Proposal #1219595011, entitled “3D Laser Scanner” (“RFP”), and Contractor’s responsive Proposal thereto dated 6-25-19 (“Proposal”).		Contract Number: MA #20203
State Agency’s Name: Iowa Department of Administrative Services (“DAS”) on behalf of the Iowa Department of Public Safety (DPS)		
Contractor’s Name: FARO Technologies (“Contractor”)		
Contract to Begin/Effective Date: 01/22/2020	Date of Expiration: 01/21/2026	Annual Extensions: None.
<p><u>Documents Incorporated/Order of Precedence.</u> This Agreement, any and all attachments to this Agreement which are incorporated by reference as if fully set forth herein, and the RFP and Proposal which are incorporated by reference as if fully set forth herein, together comprise the terms and conditions governing the relationship between the Parties (“Agreement”). In the case of any conflict or inconsistency between the specific provisions of this Agreement, any and all attachments to this Agreement, or the RFP and the Proposal, such conflict or inconsistency shall be resolved in the following order:</p> <ol style="list-style-type: none"> 1. First by giving preference to the specific provisions of this Agreement titled the General Terms and Conditions and any other Special Terms and Conditions attached hereto, including the Iowa Shortform Amendment and the Statement of Work; 2. Second by giving preference to any other Special Terms and Conditions/Ancillary Agreements and Amendments hereinafter executed, including the EULA (Appendix A: Software License Agreement); 3. Fourth by giving preference to the specific provisions of the RFP1219595011 and associated documents; 4. Fifth by giving preference to the FARO RFP Proposal, including the Technical Proposal and the Cost Proposal, including FARO email of 9/24/19 providing additional information and FARO email of 10/22/19 providing cost proposal clarification, provided, however, that none of Respondent’s exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith shall be incorporated into this Agreement unless expressly set forth herein and/or except to the extent modified by the Parties through a Change Order. 		

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have entered into this Agreement and have caused their duly authorized representatives to execute this Agreement.

FARO Technologies, Inc.

By (Authorized Signature)

Dennis Sweet

Date Signed

01/17/2020

Printed Name and Title of Person Signing

Dennis Sweet
Global Sales Director, Public Safety

Address

250 Technology Park
Lake Mary, FL 32746

State of Iowa, acting by and through the Iowa Department of Public Safety (DPS)

By (Authorized Signature)

STEPHAN K. BAYERS, Commissioner

Date Signed

1-21-20

Printed Name and Title of Person Signing

[Signatory], Iowa Department of Public Safety

215 EAST 7th STREET, Des Moines, IA 50319

Address

State of Iowa, acting by and through the Iowa Department of Administrative Services (DAS)

By (Authorized Signature)

Ken Discher

Date Signed

1-22-2020

Printed Name and Title of Person Signing

[Signatory], Iowa Department of Administrative Services

Ken Discher, Purchasing Agent 3

Address 1305 E. Walnut St.
Hoover Bld. - Level 3
Des Moines, IA 50319

General Terms and Conditions for Service Contracts/Solicitations

Negotiated between Agency and Contractor

1.1 Definitions

The following words shall be defined as set forth below:

“Acceptance” means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

“Bid Proposal” or “Proposal” means the Contractor’s proposal submitted in response to the RFP.

“Contract” means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

“Contract Declarations & Execution Page(s)” means the document that contains basic information about the Contract and incorporates by reference these General Terms for Services Contracts, the Special Terms, and all other attachments to the Contract Declarations and Executions Page(s).

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“RFP” means the Request for Proposals or Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

“Special Terms” means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for Services Contracts and the Special Terms, the Special Terms shall prevail\

“Specifications” means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

“State” means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

1.2 Availability of Contract to Other Entities

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Competitive Bidding Document.

1.3 Duration of Contract

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension decision at least sixty (60) days prior to the expiration of the initial term or renewal term.

1.4 Scope of Work

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

1.5 Compensation

1.5.1 Pricing

The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms.

The Contractor shall submit, on the frequency established on the Contract Declarations & Execution Page(s) an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor’s performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in

less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.5.2 The State has established rules for limitations on reimbursement expenses

Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

1.5.3 Withholding Payments

In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Agency or work stoppage by Contractor, in the event the Agency determines that:

1.5.3.1 Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or

1.5.3.2 Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.

No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

1.5.4 Setoff Against Sums Owed by the Contractor

In the event that Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against:

1.5.4.1 Any sum invoiced by, or owed to, Contractor under this Contract, or

1.5.4.2 Any sum or amount owed by the State to Contractor, unless otherwise required by law.

The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

1.6 Termination

1.6.1 Immediate Termination by the State

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

1.6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

- 1.6.1.2 The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;
- 1.6.1.3 The Contractor fails to comply with confidentiality laws or provisions;
- 1.6.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.6.2 Termination for Cause by the Agency

The Agency may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- 1.6.2.1 Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 1.6.2.2 Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 1.6.2.3 Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.6.2.4 Contractor terminates or suspends its business;
- 1.6.2.5 Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.6 Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.6.2.7 The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.6.2.8 Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary

right, or Contractor misappropriates or allegedly misappropriates a trade secret;

1.6.2.9 Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or

1.6.2.10 Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:

1.6.2.10.1 Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

1.6.2.10.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

1.6.2.10.3 Making an assignment for the benefit of creditors;

1.6.2.10.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or

1.6.2.10.5 Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

1.6.3 Termination upon Notice

Following thirty (30) days written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

1.6.4 Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

- 1.6.4.1** The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- 1.6.4.2** If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or
- 1.6.4.3** If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- 1.6.4.4** If the Agency's duties, programs or responsibilities are modified or materially altered; or
- 1.6.4.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.

1.6.5 Limitation of the State's Payment Obligations

In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 1.6.2), the Agency shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 1.6.4, the Agency's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 1.6.5 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- 1.6.5.1** The payment of unemployment compensation to Contractor's employees;
- 1.6.5.2** The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

- 1.6.5.3** Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 1.6.5.4** Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;
- 1.6.5.5** Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.6 Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the Agency, Contractor shall:

- 1.6.6.1** Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- 1.6.6.2** Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.6.6.3** Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 1.6.6.4** Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.
- 1.6.6.5** Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

1.6.7 Termination for Cause by Contractor

Contractor may only terminate this Contract for the breach by the Agency of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of Contractor's written notice of breach.

1.7 Confidential Information

1.7.1 Access to Confidential Information

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Agency to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency. The Contractor shall provide to the Agency a written description of its policies and procedures to safeguard confidential information. Policies

of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Agency at all times.

1.7.2 No Dissemination of Confidential information

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

1.7.3 Subpoena

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the confidential information.

1.7.4 Reporting of Unauthorized Disclosure

The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information.

1.7.5 If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

1.7.6 Survives Termination

The Contractor's obligations under this section shall survive termination or expiration of this Contract.

1.8 Indemnification

1.8.1 By the Contractor

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the “Indemnified Parties”), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General’s Office, and the costs, expenses and attorneys’ fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

- 1.8.1.1** Any breach of this Contract;
- 1.8.1.2** Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;
- 1.8.1.3** The Contractor’s performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;
- 1.8.1.4** Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;
- 1.8.1.5** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

1.8.2 Survives Termination.

Contractor’s duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

1.9 Insurance

1.9.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor’s expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor’s insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor’s performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Agency shall be named as

additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

1.9.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

1.9.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

1.10 Project Management & Reporting

1.10.1 Project Manager

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

1.10.2 Review Meetings

During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

1.10.3 Reports

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative

courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

1.10.3.1 Any event not within the control of the Contractor or the Agency that accounts for the problem;

1.10.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

1.10.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

1.10.3.4 Any request or demand by one party that another party believes is not included within the terms of this Contract.

1.10.4 Problem Reporting Omissions

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Agency may have. The Agency's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

1.10.5 Change Order Procedure

The Agency may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

1.10.5.1 Written Request: The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.

1.10.5.2 The Contractor's Response: The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.

1.10.5.3 Acceptance of the Contractor Estimate: If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.

1.10.5.4 Adjustment to Compensation: The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

1.11 Legislative Changes

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days'

written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

1.12 Intellectual Property

1.12.1 Ownership and Assignment of Other Deliverables

Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency. Notwithstanding the foregoing, all intellectual property rights and proprietary rights arising out of, embodied in, or related to the Deliverables, including software, shall be licensed to the Agency pursuant to Contractor's License Agreement, as amended, and attached herein.

1.12.2 Waiver

To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

1.12.3 Further Assurances

At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in this Contract.

1.13 Warranties

1.13.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law

Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation,

warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

1.13.2 Contractor represents and warrants that: (1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

1.13.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the Agency's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (1) procure for the Agency the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (4) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

1.13.4 Contractor represents and warrants that the Deliverables (in whole and in part) shall: (1) be free from material Deficiencies; and (2) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period

Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within ten (10) business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

1.13.5 Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.

1.13.6 Contractor represents and warrants that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.

1.13.7 Obligations Owed to Third Parties

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.

1.14 Acceptance Testing

Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Agency certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Agency to

conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Agency determines that a Deliverable satisfies its Acceptance Tests, the Agency shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Agency determines that a Deliverable fails to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall correct and repair such Deliverable and submit it to the Agency within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

- 1.14.1** Require Contractor to correct and repair such Deliverable within such period of time as the Agency may specify in a written notice to Contractor;
- 1.14.2** Refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- 1.14.3** Accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or
- 1.14.4** Terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 1.6.1 of this Contract, the Agency may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section 1.6.1. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Contractor with written notice of Final Acceptance. If the Agency determines that all Deliverables satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in the event Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable(s).

1.15 Contract Administration

1.15.1 Independent Contractor

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

1.15.2 Incorporation of Documents

To the extent this Contract arises out of an RFP, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFP and the Bid Proposal. The RFP and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFP shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFP; (3) the Bid Proposal.

1.15.3 Intent of References to Bid Documents

The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFP and the Bid Proposal. The failure of the parties to make reference to the terms of the RFP or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFP and the Contractor's Bid Proposal. The contractual obligations of the Agency cannot be implied from the Bid Proposal.

1.15.4 Compliance with the Law; Nondiscrimination in Employment.

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.15.11, Contractor

shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

1.15.5 Procurement

Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

1.15.6 Non-Exclusive Rights

This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.

1.15.7 Non-Supplanting Requirement

To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

1.15.8 Compliance with Iowa Code chapter 8F

If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

1.15.9 Amendments

This Contract may be amended in writing from time to time by mutual consent of the parties. Amendments to the General Terms for Services Contracts may appear in the Special Terms.

1.15.10 Third Party Beneficiaries

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

1.15.11 Use of Third Parties

The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.15.12 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

1.15.13 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

1.15.14 Integration

This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

1.15.15 Headings or Captions

The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

1.15.16 Not a Joint Venture

Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

1.15.17 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

1.15.18 Supersedes Former Contracts or Agreements

This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.

1.15.19 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

1.15.20 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

1.15.20.1 At the time it is actually received; or,

1.15.20.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

1.15.20.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

1.15.21 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.

1.15.22 Severability

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

1.15.23 Time is of the Essence

Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.

1.15.24 Authorization

Contractor represents and warrants that:

1.15.24.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

1.15.24.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

1.15.25 Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

1.15.26 Records Retention and Access

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

1.15.26.1 Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

- 1.15.26.2** The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 1.15.26.3** The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.
- 1.15.26.4** The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- 1.15.26.5** The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

1.15.27 Audits or Examination of Records

- 1.15.27.1** Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one (1) copy of the final audit report to the Agency within thirty (30) days after Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.
- 1.15.27.2** If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.15.27.1 above, the Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following Agency's request, the Contractor shall also submit one (1) copy of the final audit report to the Agency.
- 1.15.27.3** The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30)

days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

1.15.27.4 The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

1.15.28 Qualifications of Staff

The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

1.15.29 Solicitation

The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

1.15.30 Obligations Beyond Contract Term

This Contract shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Contract. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

1.15.31 Counterparts

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

1.15.32 Delays or Impossibility of Performance

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force

majeure” as defined in this Contract. If a “force majeure” delays or prevents the Contractor’s performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

1.15.33 Suspensions and Debarment

The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Agency or State Agency. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

1.15.34 Conflict of Interest

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

1.15.35 Certification Regarding Sales and Use Tax

By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the Agency may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

1.15.36 Right to Address the Board of Directors or Other Managing Entity

The Agency reserves the right to address the Contractor’s board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

1.15.37 Repayment Obligation

In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

1.15.38 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

1.15.39 Reporting Requirements

If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

1.15.40 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

1.15.41 Public Records

The laws of the State require procurement records to be made public unless otherwise provided by law.

1.15.42 Use of Name or Intellectual Property

Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

1.15.43 Taxes

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

1.15.44 No Minimums Guaranteed

The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

**State of Iowa Amendment to
Contractor's Standard Software License/Maintenance Agreement
("Amendment")**

This amendment ("**Amendment**") amends:

- Appendix A: FARO Software License Agreement-effective date of this MA #20203 contract.
- or
- Any of Contractor's other generally applicable terms Contractor at any point in time may claim apply to any Governmental Entity's use of Deliverables provided by Contractor, including through any online mechanism such as a "clickthrough" or other similar mechanism.

(Collectively referred to herein as "**Underlying Agreement(s)**"). To the extent of any conflict or inconsistency between the specific provisions of this Amendment and any Underlying Agreement(s), the terms of this Amendment shall prevail. The parties may be referred to herein individually as a "**Party**" or collectively as the "**Parties**"; provided, however, that where the context clearly requires, the term "**Party**" or "**Parties**" may refer to or include the Governmental Entity executing the individual Purchasing Instrument pursuant to the Underlying Agreement(s) or otherwise making the individual purchases. Notwithstanding anything in this Amendment or Underlying Agreement(s) to the contrary, individual Purchasing Instruments executed by or individual purchases otherwise made by Governmental Entities shall be deemed to incorporate the terms and conditions of this Amendment and shall constitute a separate, distinct and independent agreement between the applicable Governmental Entity and Contractor, and such Governmental Entity shall be solely responsible for any payments due and duties and obligations owed under this Amendment and any Underlying Agreement(s).

1. **Definitions.** Capitalized terms not defined herein are as defined in the Underlying Agreement(s). The following capitalized terms shall have the following meanings:

- 1.1. "**Authorized Contractors**" means independent contractors, consultants, or other Third Parties (including other Governmental Entities) who are retained, hired, or utilized by any Governmental Entity to use, maintain, support, modify, enhance, host, or otherwise assist a Governmental Entity with any Deliverables provided pursuant to any Underlying Agreement(s).

- 1.2. "**Confidential Information**" means, subject to any applicable federal, State, or local laws and regulations, including Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the Parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (ii) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (iii) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (v) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by

applicable regulatory or professional standards; or (vii) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

- 1.3. **“Customer Data”** means all information, data, materials, or documents (including Confidential Information of or belonging to any applicable Governmental Entity) originating with, disclosed by, provided by, made accessible by, or otherwise obtained by or from a Governmental Entity making purchases pursuant to any Underlying Agreement(s), including Authorized Contractors of the foregoing, or otherwise related to an Underlying Agreement(s) in any way whatsoever, regardless of form, including all information, data, materials, or documents accessed, used, or developed by Contractor, Contractor Contractors, or Contractor Personnel in connection with any Deliverables provided pursuant to any Underlying Agreement(s).
- 1.4. **“Customer Property”** means any property of or belonging to a Governmental Entity making purchases pursuant to an Underlying Agreement(s), including Customer Data, software, hardware, programs or other property possessed, owned, or otherwise controlled or maintained by a Governmental Entity.
- 1.5. **“Customer-Owned Deliverables”** means any Deliverables discovered, created, or developed by Contractor, Contractor Contractors, or Contractor Personnel at the direction of the applicable Governmental Entity or for a Governmental Entity or for a specific project pursuant to any Underlying Agreement(s), including all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto.
- 1.6. **“Deliverables”** means all of the goods, Services, Software, System, work, work product, items, materials, property, and/or related Documentation to be created, developed, produced, delivered, performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any Underlying Agreement(s).
- 1.7. **“Documentation”** means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation, and materials discovered, created, or developed by Contractor, Contractor Contractors, or Contractor Personnel hereunder or otherwise related to or used in conjunction with any Deliverables, in any medium, including hard copy, electronic, digital, and magnetically, or optically encoded media.
- 1.8. **“Governmental Entity”** shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101, or any successor provision thereto. The term Governmental Entity includes without limitation Participating Agencies, agencies, independent agencies, the Judicial Branch, the Legislative Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.
- 1.9. **“I.T. Governance Document(s)”** or **“Governance Document(s)”** means any Information Technology policies, standards, processes, guidelines, or procedures developed by OCIO pursuant to Iowa Code section 8B, *available at: <https://ocio.iowa.gov/>* (navigate to policies, standards, rules, respectively), and which are generally applicable to Participating

Agencies, absent a waiver granted pursuant to Iowa Code section 8B.21(5) or any corresponding implementing rules.

- 1.10. **“Office of the Chief Information Officer”** or **“OCIO”** means the Office of the Chief Information Officer of the State of Iowa created by Iowa Code chapter 8B.
- 1.1. **“Non-Appropriation Event”** means any of the following:
- a. The legislature or governor fail, in the sole opinion of the applicable Governmental Entity, to appropriate funds sufficient to allow the Governmental Entity to either meet its obligations under any Underlying Agreement(s), or to operate as required or to fulfill its obligations under any Underlying Agreement(s).
 - b. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by a Governmental Entity (regardless of the source of funding or revenues) to make any payment under any Underlying Agreement(s) are insufficient or unavailable for any other reason as determined by the Governmental Entity in its sole discretion;
 - c. If a Governmental Entity’s authorization to conduct its business or engage in activities or operations related to the subject matter of any Underlying Agreement(s) is withdrawn or materially altered or modified;
 - d. If the applicable Governmental Entity’s duties, programs, or responsibilities are modified or materially altered; or
 - e. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the applicable Governmental Entity’s ability to fulfill any of its obligations under any Underlying Agreement(s).
- 1.11. **“Participating Agency”** shall have the same meaning ascribed it under Iowa Code section 8B, including any subsequent amendments or successor provisions thereto.
- 1.12. **“Purchasing Instrument”** means documentation issued by a Governmental Entity to Contractor for the purchase of Deliverables, including a **“Purchase Order”** or **“Statement of Work”** executed pursuant to any Underlying Agreement(s), regardless of form, and which identifies the Deliverables to be purchased and any other requirements deemed necessary by the applicable Governmental Entity, such as compensation and delivery dates.
- 1.13. **“Security Breach”** means the unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their user rights or use systems inappropriately. **“Security Breach”** shall also be deemed to include any breach of security, confidentiality, or privacy as defined by any applicable law, rule, regulation, or order.
- 1.14. **“Services”** include without limitation all services performed or provided by or on behalf of, or otherwise made available through, Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any Underlying Agreement(s), including any Software or System or any corresponding hosting, implementation, migration, or configuration services associated therewith or related thereto.
- 1.15. **“Software”** means any and all other software, programs, applications, modules and components, in object code form, and all related Source Code.

- 1.16. **“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.
 - 1.17. **“System”** means any system provided or otherwise made available by or through Contractor, Contractor Contractors, or Contractor Personnel, directly or indirectly, in connection with any Underlying Agreement(s), including any Software, programs, or applications associated therewith or included or incorporated therein, regardless of the method of delivery, including any Internet-enabled, Web-based or other similar delivery method.
 - 1.18. **“Third Party”** means a person or entity (including, any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to any Underlying Agreement(s).
 - 1.19. **“Contractor Contractor(s)”** means any of Contractors authorized subcontractors, affiliates, subsidiaries, or any other Third Party acting on behalf of or at the direction of Contractor, directly or indirectly, in performing or providing Deliverables under any Underlying Agreement(s).
 - 1.20. **“Contractor Personnel”** means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Contractor or any Contractor Contractor performing or providing Deliverables under any Underlying Agreement(s).
2. **Term.** The initial term of any Underlying Agreement(s) shall begin on the date of last signature, below (**“Effective Date”**), and end on the date that is six years after the Effective Date (**“Initial Term”**), unless terminated earlier in accordance with the terms of the Underlying Agreement(s), as amended. The Initial Term and any Renewal Terms are referred to herein collectively as the **“Term.”** Contractor shall provide the applicable Governmental Entity with at least ninety (90) days prior written notice of the end of the Initial Term and each Renewal Term.
 3. **Scope/Applicability.** Select Governmental Entities in the State of Iowa have the authority to enter into agreements for use by other Governmental Entities. To the extent this Amendment is executed by a Governmental Entity possessing such authority, unless another Governmental Entity possesses a separate, written agreement or amendment signed by both the specific Governmental Entity and Contractor following receipt of any required approvals, to the extent permitted by applicable law, this Amendment shall supersede any Underlying Agreement(s) that may have been or may be separately executed by any other Governmental Entity, including through any online mechanism such as a “clickthrough” or other similar mechanism.
 4. **Grant of License or Use Rights.** Notwithstanding anything in any Underlying Agreement(s) to the contrary, any license, use rights, or other similar rights granted by Contractor or Contractor Contractors, directly or indirectly, to a Governmental Entity pursuant to an Underlying Agreement(s) shall include, and any Software, System, or other Deliverables provided by Contractor or Contractor Contractors, directly or indirectly, shall include, the following additional grant of rights:
 - 4.1. Any and all rights necessary for the applicable Governmental Entity to use, install, maintain, support, or host any Software, System, or other Deliverables for the applicable Governmental Entity’s business activities, including as described in the RFP or Proposal, if any;

- 4.2. The same grant of rights to the applicable Governmental Entity's Authorized Contractors to the extent of any quantity ordered (regardless of whether on a "user," "seat", "device," or other similar basis) by the applicable Governmental Entity.
- 4.3. To the extent the applicable Governmental Entity intends to use, install, maintain, support, or host any Software, System, or other Deliverables on a Governmental Entity's own systems or devices, the right to use, install, maintain, support, or host such Software, System, or other Deliverables on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers, systems, or other similar devices of any Governmental Entity or its Authorized Contractor(s).

5. Intellectual Property.

- 5.1. *Ownership and Assignment of Customer-Owned Deliverables.* Contractor, Contractor Contractors, and Contractor Personnel hereby irrevocably assign, transfer, and convey to the commissioning Governmental Entity all right, title and interest in and to Customer-Owned Deliverables. Contractor represents and warrants that the applicable Governmental Entity shall acquire good and clear title to all Customer-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any Third Party, including Contractor Contractors and Contractor Personnel. Contractor, Contractor Contractors, and Contractor Personnel shall not retain any property interests or other rights in or to Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Governmental Entity commissioning such Deliverables and the payment of such royalties or other compensation as the Governmental Entity deems appropriate. Immediately upon the request of the Governmental Entity, Contractor will deliver to the Governmental Entity or destroy, or both, at the Governmental Entity's option, all copies of any Customer-Owned Deliverables in the possession of Contractor. Notwithstanding the foregoing, Government Entity is licensing the intellectual property with the limitations per Section II (License Grant) of the License Agreement.
- 5.2. *Waiver.* To the extent any of Contractor's, Contractor Contractor's, or any Contractor Personnel's rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor, Contractor Contractors, and Contractor Personnel hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the applicable Governmental Entity's rights in and to Customer-Owned Deliverables.

6. Payment. Notwithstanding anything in any Underlying Agreement(s) to the contrary:

- 6.1. A Governmental Entity shall pay all undisputed amounts set forth in approved invoices in arrears and in conformance with Iowa Code Section 8A.514 and 11 Iowa Admin. Code 41.1(2). A Governmental Entity may pay in less than sixty (60) days, as provided in Iowa Code Section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code Section 8A.514. Notwithstanding, a Governmental Entity may, in its sole discretion, elect to prepay fees for services and deliverables in accordance with applicable laws, rules, policies, and procedures, including State of Iowa Accounting Policies and Procedures, available at: <https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>.
- 6.2. In addition to the requirements of Section 6.1, if a Governmental Entity procures or makes payments for Deliverables to or from a Third Party, such as a distributor or reseller, and not from Contractor directly, any terms or conditions regarding pricing, payment, and/or interest shall be void, and payment to such Third Party shall relieve the Governmental

Entity of any obligation, responsibility, or liability related to the payment of any fees or payments due or owed for such Deliverables.

- 7. Termination for Non-Appropriation.** Notwithstanding anything in any Underlying Agreement(s) to the contrary, and in addition to any other termination provision(s) set forth therein, in the event of a Non-Appropriation Event, the applicable Governmental Entity may terminate any Underlying Agreement(s) without advance notice and without penalty or liability. In the event of such termination, any further obligation owed to Contractor by the applicable Governmental Entity shall be limited by, and subject to, legally available funds. Notwithstanding anything in any Underlying Agreement(s) to the contrary, nothing in this Amendment or any Underlying Agreement(s) shall be construed to waive any clause regarding the availability or appropriation of funds.
- 8. Termination Upon Notice.** Following 30 days' written notice, the Governmental Entity may terminate the Underlying Agreement(s) in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods provided under the Underlying Agreement(s) to the Governmental Entity up to and including the date of termination.
- 9. Compliance with Law.** Contractor represents, warrants, covenants, and promises that Contractor, Contractor Contractors, and Contractor Personnel have complied with, and shall continue to comply with, and, to the extent applicable, the Deliverables will comply with all applicable federal, state, foreign, and local laws, rules, regulations, codes, standards, ordinances, and orders, both generally and in connection with the performance of any Underlying Agreement(s), including the following:

 - 9.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code chapter 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the applicable Governmental Entity's or its designee's written request, Contractor shall submit a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Administrative Code chapter 11—121.
 - 9.2. Those requiring the use of targeted small businesses as subcontractors and suppliers in connection with government contracts.
 - 9.3. Those pertaining to any permitting and licensure requirements in carrying out the work performed under any Underlying Agreement(s).
 - 9.4. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 9.5. Applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, including Web Content Accessibility Guidelines (WCAG) 2.0, including any amendments thereto or any subsequent versions thereof, and all standards and requirements established by the Architectural and Transportation Barriers Access Board.
 - 9.6. All applicable I.T. Governance Document(s).
 - 9.7. To the extent a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, any applicable federal requirements, including those found at 2 CFR 200.

Contractor shall take such steps as necessary to ensure Contractor Contractors and Contractor Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Amendment or any Underlying Agreement(s) to the contrary, Contractor, Contractor Contractors, and Contractor Personnel's failure to fulfill any requirement set forth in this Section shall be regarded as a material breach and the applicable Governmental Entity may cancel, terminate, or suspend, in whole or in part any Underlying Agreement(s), in whole or in part. In addition, Contractor may be declared ineligible for future State contracts in accordance with authorized procedures or Contractor may be subject to other sanctions as provided by law or rule.

10. Confidential Information.

10.1. Contractor's Treatment of Confidential Information.

10.1.1. *Limited Access.* Customer Data shall at all times remain the property of the applicable Governmental Entity, and the applicable Governmental Entity shall retain exclusive rights thereto and ownership thereof. Contractor, Contractor Contractors, and Contractor Personnel may have access to Customer Data solely to the extent necessary to carry out their duties under any Underlying Agreement(s). Contractor, Contractor Contractors, or Contractor Personnel shall presume all Customer Data is considered confidential, hold all Customer Data in the strictest confidence, and use and permit use of Customer Data solely for the purposes of providing Deliverables under any Underlying Agreement(s), subject to any restrictions set forth herein or in any state and federal laws, rules, regulations, standards, and orders applicable either during the Term or thereafter. Contractor, Contractor Contractors, and Contractor Personnel shall not gather, store, log, archive, use, or otherwise retain Customer Data in any manner other than as expressly authorized by any Underlying Agreement(s), and will not disclose, distribute, sell, commercially or politically exploit, share, rent, assign, lease, or otherwise transfer or disseminate Customer Data to any Third Party, except as expressly permitted hereunder or as Contractor may be expressly directed in advance in writing by the applicable Governmental Entity. Contractor, Contractor Contractors, and Contractor Personnel shall not remove from any Governmental Entity's facilities or retain a copy of any Customer Data unless such removal or retention is necessary to provide or perform Deliverables, to fulfill their obligations under any Underlying Agreement(s), or is otherwise approved in writing by the applicable Governmental Entity. Contractor will immediately report the unauthorized disclosure of Customer Data to the applicable Governmental Entity.

10.1.2. *Destruction or Return of Customer Data.* On the applicable Governmental Entity's written request or upon expiration or termination of any Underlying Agreement(s) for any reason, Contractor will promptly:

10.1.2.1. After providing notice to the applicable Governmental Entity and subject to its prior written approval, return or destroy, at the applicable Governmental Entity's option, all Customer Data; and

10.1.2.2. Provide a notarized written statement to the applicable Governmental Entity certifying all Customer Data has been returned or destroyed to the Governmental Entity, whichever is applicable.

To the extent Contractor is required to destroy Customer Data pursuant to this Section, Customer Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology ("NIST")-approved methods.

- 10.1.3. *Compelled Disclosures.* To the extent required by applicable law or by lawful order or requirement of a court or governmental authority of competent jurisdiction over Contractor, Contractor may disclose Customer Data to a Third Party in accordance with such law, order, or requirement, subject to the following conditions:
- 10.1.3.1. As soon as becoming aware of such law, order, or requirement, and no-less-than five (5) business days prior to disclosing Customer Data pursuant thereto, Contractor will notify the applicable Governmental Entity in writing, specifying the nature of and circumstances surrounding the contemplated disclosure, and forward any applicable process, including a subpoena, to the appropriate Governmental Entity for its review.
 - 10.1.3.2. Contractor will consult with the applicable Governmental Entity on the advisability of taking legally-available steps to resist or narrow any required response or disclosure.
 - 10.1.3.3. Contractor will use best efforts not to release Customer Data pending the outcome of any measures taken by the applicable Governmental Entity to contest, oppose, or otherwise seek to limit such disclosure by Contractor or any Third Party ultimately obtaining such Customer Data. Contractor will cooperate with and provide assistance to the applicable Governmental Entity regarding such measures.
 - 10.1.3.4. Soley the extent Contractor is required to disclose Customer Data to a Third Party, Contractor will furnish only such portion of Customer Data as it is required to disclose and will exercise best efforts to obtain an order or other reliable assurances that Customer Data will be held in confidence by any Third Party to which it is disclosed.
 - 10.1.3.5. Notwithstanding any such compelled disclosure by Contractor, such compelled disclosure will not otherwise affect Contractor's obligations hereunder with respect to Customer Data so disclosed.

10.2. Treatment of Contractor's Confidential Information.

- 10.2.1. *Safeguarding Obligation.* Except as otherwise provided or contemplated herein, and subject to applicable state, federal, and/or international laws, rules, regulations, or orders (including Iowa Code Chapter 22 and any corresponding implementing rules, regulations, or orders), Governmental Entities shall not intentionally disclose Contractor's Confidential Information to a Third Party (excluding other Governmental Entities and Authorized Contractors) without the prior written consent of Contractor.
- 10.2.2. *Destruction or Return of Contractor's Confidential Information.* On termination or expiration of any Underlying Agreement(s), the applicable Governmental Entity shall, except to the extent otherwise required by applicable laws, rules, procedures, or record retention schedules/requirements, return or destroy, at Contractor's option, all of Contractor's Confidential Information (excluding items subject to any continuing licenses inuring to the benefit of the applicable Governmental Entity hereunder or that are required for use of any Deliverables).
- 10.2.3. *Compelled Disclosures.* Notwithstanding and in addition to the foregoing, Governmental Entities may disclose Contractor's Confidential Information:
 - 10.2.3.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests

for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;

- 10.2.3.2. Pursuant to any applicable laws, rules, or regulations;
- 10.2.3.3. If the applicable Governmental Entity reasonably determines such information is not a confidential record pursuant to Iowa Code Section 22.7 or other applicable laws, rules, and regulations; or
- 10.2.3.4. If the applicable Governmental Entity, in the Governmental Entity's sole discretion, determines Contractor has not provided or is unwilling to provide facts sufficient to enable the Governmental Entity to make a determination as to whether such information constitutes a confidential record under Iowa Code Section 22.7 or other applicable laws, rule, and regulations.

Prior to disclosing any of Contractor's Confidential Information as permitted above, a Governmental Entity shall provide reasonable notice to Contractor of the circumstances giving rise to such disclosure. In addition, Contractor agrees to indemnify and hold harmless any Governmental Entity and its officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses, and attorney fees of other counsel retained by or on behalf of the Governmental Entity) arising out of, resulting from, or in any way related to any judgments or damages awarded against any Governmental Entity in favor of the party requesting any of Contractor's Confidential Information.

- 10.3. Open Records and Electronic Discovery Requests and Records Retention. Contractor will, upon the applicable Governmental Entity's request and within any time period specified by the applicable Governmental Entity, take all actions requested by the Governmental Entity to assist it in complying timely with any request for Customer Data or other data or information that may be made by any Third Party in accordance with applicable public or open records laws (including Iowa Code Chapter 22) or in connection with any subpoena, court order, discovery request, regulatory or criminal investigation or proceeding, or any other matter that may require the Governmental Entity to produce or provide Customer Data or other data or information to a Third Party. Contractor will produce and provide all Customer Data or other data or information within the time period set forth in the Governmental Entity's request. Contractor will take all steps necessary to ensure Customer Data is stored and maintained in its original state so as to not create any spoliation, evidentiary, or electronic discovery issues. In addition, Contractor will, upon the applicable Governmental Entity's request, take all actions requested by the Governmental Entity to assist it in complying with any federal, state, or local record retention requirements, policies, procedures, or other requirements.
- 10.4. Ancillary Agreements and Non-Disclosure Agreements. Contractor or Contractor Contractors will execute any agreements to address any compliance, legal, confidentiality, or privacy concerns that may be unique to an applicable Governmental Entity making purchases hereunder, such as a Business Associate Agreement ("BAA") or Criminal Justice Information System ("CJIS") Security Addendum, or any other non-disclosure or confidentiality agreements in connection with any Underlying Agreement(s) deemed necessary by the applicable Governmental Entity ("**Ancillary Agreement(s)**").

- 10.5. Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or Third Parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party, including any Governmental Entity, will be entitled to appropriate equitable remedies, and may seek injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. Any breach of this Section will constitute a material breach of this Agreement and be grounds for immediate termination of any Underlying Agreement(s) in the exclusive discretion of the non-breaching Party.
- 10.6. Survives Termination. Contractor's duties as set forth in this Section shall survive termination of this Agreement and shall apply to all acts or omissions taken or made in connection with Contractor's, Contractor Contractor's, or Contractor Personnel's performance of this Agreement regardless of the date any potential claim is made or discovered by a Governmental Entity.
11. **Use of Third Parties.** None of the Deliverables to be provided by Contractor pursuant to any Underlying Agreement(s) shall be subcontracted or delegated to any Third Party, including Contractor Contractors, without the prior written consent of the applicable Governmental Entity. Such consent shall not be deemed in any way to provide for the incurrence of any additional obligation of a Governmental Entity, whether financial or otherwise. Any subcontract to which a Governmental Entity has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the applicable Governmental Entity may deem necessary. Contractor is solely liable for any and all payments that may be due to Contractor Contractors pursuant to any subcontract. Contractor shall indemnify and hold harmless the any Governmental Entity and their officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Contractor's breach of any subcontract into which it enters, including Contractor's failure to pay any and all amounts due to any Contractor Contractor. In addition, any Governmental Entity is not responsible for any failure of any Contractor Contractors to pay any amounts that may be due Contractor, and Contractor may not refuse to perform its obligations under this Agreement for any such failure. If Contractor fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to Contractor or any subcontractor by any person in connection with Deliverables performed or provided under any Underlying Agreement(s), the applicable Governmental Entity may pay such claim and charge the amount of the payment against funds due or to become due Contractor under any Underlying Agreement(s). The payment of a claim in such manner shall not relieve Contractor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow Governmental Entities making purchases hereunder to access the subcontractor's books, documents, and records and for inspections of work, as required of Contractor herein. No subcontract or delegation of work shall relieve or discharge Contractor from any obligation, provision, or liability under this Agreement. Contractor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Contractor Contractors. Any action of a Contractor Contractor, which, if done by Contractor, would constitute a breach of this Agreement, shall be deemed a breach by Contractor and have the same legal effect. The term "**Contractor**" as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Contractor Contractors and Contractor Personnel.

- 12. Conflicts of Interest.** Contractor represents, warrants, and covenants that no relationship exists or will exist during the Term between Contractor, Contractor Contractors, or Contractor Personnel and any Governmental Entities that is or may constitute a conflict of interest or appearance of impropriety. To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to any Underlying Agreement(s), and Contractor, Contractor Contractors, and Contractor Personnel shall not engage in any conduct or permit any Third Party from engaging in any conduct that would violate that chapter.
- 13. Limitation of Liability.** If the Terms contain any provision(s) limiting Contractor's liability or providing for sole and exclusive remedies, any such provision(s) shall be superseded by or subject to the following, as applicable: Notwithstanding anything in this Amendment or any Underlying Agreement(s) to the contrary, and solely to the extent permitted by applicable laws, rules and regulations: (a) the maximum liability of either Party under this Agreement for direct damages shall be one times the Contract Value ("Contract Value" is defined as the aggregate total compensation to be paid by a Governmental Entity under the entire term of the Agreement, including all renewals and extensions); provided, however, under no circumstances shall the foregoing limitation or any other provision in this amendment or any Underlying Agreement(s) that either limits Contractor's liability or provides for sole or exclusive remedies apply to any losses, damages, expenses, costs, settlement amounts, legal fees, judgments, actions, claims, or any other liability arising out of or relating to:
- 13.1. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence;
 - 13.2. Death, bodily injury, or damage to real or personal property;
 - 13.3. Any contractual obligations of Contractor pertaining to indemnification; intellectual property; liquidated damages; compliance with applicable laws; confidential information; and/or Security Breach;
 - 13.4. Claims arising under this Agreement calling for indemnification of the State or for third-party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by Contractor's negligence or willful conduct.
- 14.** Not Used.
- 15. Indemnification.**
- 15.1. Governmental Entities to Contractor. Notwithstanding anything in this Amendment or any Underlying Agreement(s) to the contrary, Governmental Entities shall under no circumstances have any obligation to defend or indemnify Contractor or its subcontractors, agents, or other third parties acting on its behalf for any reason.
 - 15.2. Contractor to Governmental Entities. Notwithstanding anything in this Amendment or any Underlying Agreement(s) to the contrary, any obligation of Contractor to defend any Governmental Entity in any Underlying Agreement(s) shall be replaced and superseded with an obligation to indemnify and hold harmless the applicable Governmental Entity and their employees, officers, board members, agents, representatives, and officials.
- 16. Records Retention and Access.** Contractor shall maintain books, documents and records that sufficiently and properly document Contractor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Contractor shall permit the any Governmental Entity or its designee, and where federal funds are involved, the Comptroller

General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Contractor relating directly or indirectly to Contractor's performance under any Underlying Agreement(s). Contractor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Contractor shall require Contractor Contractors to agree to the same provisions of this section.

17. **Reservation of Immunity.** Notwithstanding anything in any Underlying Agreement(s) to the contrary, nothing in this Amendment or any Underlying Agreement(s) shall be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the any Governmental Entity, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise.
18. **Choice of Law and Forum.** All Underlying Agreement(s) shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with any Underlying Agreement(s), including after expiration or termination of the same, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Contractor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of any Underlying Agreement(s) shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Contractor irrevocably consents to service of process by certified or registered mail addressed to Contractor's designated agent. Contractor appoints CT CORPORATION SYSTEM, 1200 SOUTH PINE ISLAND ROAD, PLANTATION, FLORIDA, 33324 as its agent to receive service of process. If for any reason Contractor's agent for service is unable to act as such or the address of the agent changes, Contractor shall immediately appoint a new agent and provide applicable Governmental Entities with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the applicable Governmental Entity. Nothing in this provision will alter the right of any Governmental Entity to serve process in any other manner permitted by law. This Section shall survive termination of this Agreement.
19. **RFP and Contractor's Proposal.** To the extent applicable, the Request for Proposal #RFP1219595011 ("**RFP**") and Contractor's proposal dated 6/25/2019 in response to the RFP ("**Proposal**"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into any Underlying Agreement(s) by this reference as if fully set forth therein; provided, however, that none of Contractor's exceptions, objections or proposed modifications respecting the RFP or any terms associated therewith (collectively "**Contractor Exceptions**") shall be incorporated therein unless expressly set forth herein. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Contractor, except that any Contractor Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of the Parties, unless expressly stated herein. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved according to the Order of Preference as presented on page one of the Master Agreement. The references to the Parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of

the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered or stated in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the applicable Governmental Entity shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the State.

- 20. Independent Contractor.** Contractor is an independent contractor providing Deliverables to Governmental Entities.
- 21. Not a Joint Venture.** Nothing in any Underlying Agreement(s) shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party.
- 22. No Third Party Beneficiaries.** There are no third party beneficiaries to any Underlying Agreement(s).
- 23. Severability.** If any provision of this Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Amendment.
- 24. Captions and Terms.** Unless the context otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.”
- 25. Multiple Counterparts.** This Amendment may be executed in several counterparts, all of which when taken together shall amend all Underlying Agreement(s), notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

STATEMENT OF WORK

The Iowa Department of Public Safety (DPS) issues the following SOW (Statement of Work) to FARO Technologies for the procurement, implementation, training and support services per the RFP1219595011 for a 3D Laser Scanner.

DPS orders the 3D Laser Scanner from FARO Technologies according to the Documents Incorporated/Order of Preference outlined on page 1 of the Master Agreement #20203.

Per the FARO Technology Cost Proposal, FARO Cost Proposal Quotation No. 20238364, and FARO Technologies – Cost proposal clarification email (dated 10/22/19) this means the following components will be received by DPS:

<u>DELIVERABLE</u>	<u>COST</u>
3D Laser Scanner and Software	\$55,865.97
Training Costs	\$ 9,130.00
Ongoing Support (for both Scanner & Software)	
(Following 1 year after Go Live date of no cost Support, Year 2 – 5 total costs)	\$19,926.71
Year 6 Support Cost	<u>\$ 6,292.23</u>
	TOTAL \$91,214.91

DPS expects to communicate regularly with FARO Technologies concerning the specific details and timing for receipt of the above named deliverables.

DPS plans payment of all of the above named deliverables prior to 6/30/20. In return for pre-payment of the year 2 – 6 support costs (\$26218.94 value) DPS proposes a 5% discount off support costs (\$1,310.95). Total payment for all deliverables prior to 6/30/20 would then be \$89,903.96.

Should this contract between FARO Technologies and the State of Iowa end prior to the six-year period in accordance with contract provisions the State of Iowa would expect that any of the funds pre-paid for services not yet delivered would be promptly refunded by FARO Technologies to the State of Iowa.

Appendix A: 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 INDICATE 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.

FARO TECHNOLOGIES, INC.

SOFTWARE LICENSE

AGREEMENT

This Software License Agreement is a legal agreement between You (defined below) and FARO Technologies, Inc. ("FARO"). By installing, copying, downloading, accessing, or otherwise using the Software you represent that you are acting on behalf of your employer (such employer being hereinafter referred to as "You," "you" or the "Licensee"), and are authorized to, and do, accept these terms and conditions on its behalf.

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. For the avoidance of doubt, if you have purchased a Maintenance Package in good standing at the time of the release of an Upgrade and if such Maintenance Package happens not to technically support any such Upgrade, then FARO shall remedy this and if FARO cannot remedy this in due course make a reasonable refund to You up to the amount that You have paid for the Maintenance Package.

III. Limited Warranty

3.1 Licensed Software Performance. FARO warrants that, for a period of sixty (60) 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 Remedy. 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: (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.

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, NON-INFRINGEMENT, 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. Fees and Payment

You will pay your FEES, accept Invoicing, and make Payments in accordance with Iowa Code section 8A.514, as set forth in the Amendment.

4.1 RESERVED.

4.2 RESERVED.

V. Term and Termination.

5.1 Termination by FARO. FARO may terminate this Agreement upon written prior notice of at least 30 (thirty) days if you violate material obligations that you have under this Agreement. Termination of this Agreement by FARO shall, among other things, constitute termination of all licenses granted hereunder.

5.2 Termination by You. You may terminate this Agreement by prior written notice to FARO, if FARO fails to perform any material term or condition of this Agreement, and does not cure such failure within thirty (30) days after FARO's receipt of written notice from You particularly stating the default and your intention to terminate.

5.3 Effect of Termination. Within fifteen (15) days after any termination of this Agreement, You will furnish to FARO a written certification that through your best efforts and to the best of your knowledge, the original and all copies of the Licensed Software received from FARO or made in connection with such license have been returned to FARO or destroyed. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, nor shall termination relieve your obligation to pay all fees that have accrued or are otherwise owed by You hereunder.

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 out of your own fault or negligence.

6.2 BASIS OF THE AGREEMENT. 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. Intellectual Property Infringement

7.1 Infringement Claims. FARO shall indemnify and hold harmless the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) suffered by a 3rd party and directly related to, resulting from, or arising out of this Agreement, including any claims related to, resulting from, or arising out of any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any third party. FARO agrees to defend you, with approval of and in coordination with the Attorney General's Office, in a lawsuit or other judicial action, and pay the amount of any adverse final judgment (or settlement to which FARO consents) from such lawsuit or judicial action, asserted by any third party against you that the Software infringes any U.S. patent, copyright or trademark issued as of the date FARO provided you with the Software (each, a "Claim"); provided, that you (a) promptly notify FARO in writing of the Claim; (b) give FARO sole control over the defense and settlement, if any, of the Claim; (c) provide FARO with full cooperation and assistance

in the defense of the Claim; and (d) fully comply with FARO's direction to cease any use of the potentially infringing Software. In addition to the obligations set forth above, if FARO receives information concerning a Claim, FARO may, at its expense, but without obligation to do so, undertake further actions such as: (a) procuring for you such patent, copyright or trademark right(s) or license(s) as may be necessary to address the Claim; or (b) replace or modify the Software to make it non-infringing. In the event FARO is unable to, or determines, in its reasonable judgment that it is commercially unreasonable to procure the right to continued use of the allegedly infringing Software or replace or modify the Software to make it non-infringing within forty-five (45) days of notice of the Claim, You may terminate this Agreement in whole or in part, and have FARO refund to You all associated fees, compensation or other amounts paid by You for the time You would have otherwise continued the use of the allegedly infringing Software and fees, compensation, or other amounts incurred in the transition to successor good or service. The allegedly infringing Software shall be promptly returned to FARO.

7.2 Limitations. The obligations set forth in this Section VII (Intellectual Property Infringement) shall not apply, and FARO shall have no obligations with respect to, any Claim or infringement arising out of: (a) the use of the Software other than in strict accordance with this Agreement and any applicable documentation or instructions supplied by FARO; (b) any alteration, modification or revision of the Software not performed by FARO; (c) your failure to use or implement Updates made available without charge by FARO; (d) your distribution, marketing or use of the Software for the benefit of third parties; (e) the combination of the Software with materials not supplied by FARO; or (f) information, materials or specifications provided by or on behalf of yourself. In the event that FARO is required to defend a lawsuit or other judicial action pursuant to Section 7.1 (Infringement Claims) above and such lawsuit or other judicial action includes allegations with respect to non-FARO products (including without limitation, third party materials), then you shall defend against such allegations. Moreover, FARO and its suppliers shall have no liability for any intellectual property infringement claim (including, without limitation, any Claim) based on your manufacture, use, sale, offer for sale, information or other disposition or promotion of the Software after it has received FARO's notice that you should cease use of such Software due to such claim. You shall refrain from any continued use of the allegedly infringing Software after FARO provides you with such notice.

VIII. Protection and Security of Software

8.1 Confidentiality. Except as provided under or subject to state, federal, or international laws, rules and regulations or orders, including Iowa Code Chapter 22, You shall not intentionally disclose FARO's Confidential Information to a third party without the prior written consent of FARO. You agree to disclose the Software only to your employees or third persons with a legitimate need to know and to use such information only for the purposes of duly executing the Software or for complying with U.S. or Iowa laws and regulations. If you disclose the License Software pursuant to a governmental agency or court of law, you shall provide FARO, if admissible under U.S. or Iowa laws and regulations with reasonable written notice of such request. FARO agrees to indemnify and hold harmless You, including officers, directors, employees, officials, and agents from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of You) arising out of, resulting from, or in any way related to any judgments or damages awarded against any of the

foregoing entities or individuals in favor of a Third Party requesting any of FARO's Confidential Information against You or any such entities or individuals.

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 that no remedy at law for damages is adequate to fully compensate FARO for the breach of the covenants in this Section VIII. Therefore, FARO shall be entitled to temporary injunctive relief against you without the necessity of proving actual damages. 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: provided, however, that all such reports represent performance metrics only and do not contain non-anonymized personal data belonging to individuals or group of individuals.

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 will not be interrupted by the collection of the data or information. You will 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 Notices. Any notices required or permitted to be given hereunder by either party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery company; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested. In the case of notice sent

to FARO, all such notices shall be sent to the attention of the individual listed on the Contract Declarations and Execution page. Notices shall be deemed received on the earliest of personal delivery, upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed, one business day following deposit with a bonded courier or overnight delivery company, or three business days following deposit in the U.S. Mail as required herein.

10.2 Force Majeure. Any delays in, or failure to perform, any provision of this Agreement (other than for the payment of amounts due hereunder) caused by acts, omissions, events, causes or conditions beyond the parties' reasonable control (including, without limitation, acts of God, third-party non-performance, failure of or defects and errors in third party software or hardware, acts of governmental entities, civil disobedience or insurrection, lock-outs, freight embargoes, acts of civil or military authorities, terrorists, fires, floods, wars, or riots) shall not constitute a breach of this Agreement and shall not give rise to any claim for damages, and the time for performance of such provision, if any, shall be deemed to be extended for a reasonable period of time at least equal to the duration of the conditions preventing performance.

10.3 Waiver. All waivers under this Agreement shall be in writing and be identified in such writing as a waiver to this Agreement in order to be effective. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right of the non-defaulting party under this Agreement.

10.4 Survival. The expiration or termination of this Agreement for any reason will not release either party from any liabilities or obligations set forth herein which (a) the parties have expressly stated will survive such expiration or termination, (b) remain to be performed, or (c) by their nature would be intended to be applicable following such expiration or termination.

10.5 RESERVED.

10.6 Assignment. You may not sublicense, assign or transfer this Agreement or the Software without prior written consent of FARO. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations hereunder without prior written consent of FARO is null and void.

10.7 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.

10.8 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.