

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):** October 22, 2020

**FARO TECHNOLOGIES, INC.**

(Exact name of registrant as specified in its charter)

**Florida**  
(State or other jurisdiction  
of incorporation)

**0-23081**  
(Commission  
File Number)

**59-3157093**  
(IRS Employer  
Identification No.)

**250 Technology Park, Lake Mary, Florida 32746**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (407) 333-9911**

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$.001	FARO	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01. Entry into a Material Definitive Agreement.**

On October 22, 2020, the Board of Directors (the “Board”) of FARO Technologies, Inc. (the “Company”) approved, upon recommendation by the Nominating, Governance and Sustainability Committee, new forms of standard indemnification agreements to be entered into between the Company and each of its directors (the “Director Indemnification Agreement”) and between the Company and each of its executive officers (the “Officer Indemnification Agreement,” and, together with the Director Indemnification Agreement, the “Indemnification Agreements”). The Company will execute new Indemnification Agreements with all directors and executive officers (the “Indemnitees”), which will supersede any previous indemnification agreements entered into by such Indemnitees with the Company.

The new Indemnification Agreements provide, among other things, that the Company will indemnify each Indemnitee to the fullest extent permitted by law, subject to certain conditions, against all expenses and certain other amounts actually and reasonably incurred by the Indemnitee in connection with proceedings in which the Indemnitee is involved, or is threatened to become involved, by reason of the fact that the Indemnitee is or was a director or officer of the Company, as applicable. Subject to certain conditions, the new Indemnification Agreements also entitle Indemnitees to advancement of attorney’s fees and other expenses and provide procedures for determining whether an Indemnitee is eligible for indemnification. Under the new Indemnification Agreements, an Indemnitee will be eligible for indemnification until the later of (a) ten years after the date he or she ceases to serve as a director or officer, as applicable, or (b) one year after the final termination of any proceeding, including any appeal, then pending in respect of which such Indemnitee is granted rights of indemnification or advancement under the Indemnification Agreement and of any proceeding commenced by the Indemnitee thereunder. The new Indemnification Agreements are intended to provide indemnification rights to the fullest extent permitted under Florida law and shall be in addition to any other rights the directors and officers may have under the Company’s Amended and Restated Articles of Incorporation, as amended, and Amended and Restated Bylaws.

The foregoing summary of the Indemnification Agreements does not purport to be complete and is qualified in its entirety by reference to the full text of the Indemnification Agreements, which are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K.

**Item 2.02. Results of Operations and Financial Condition.**

On October 28, 2020, the Company issued a press release announcing its results of operations for the third fiscal quarter ended September 30, 2020. A copy of the press release is furnished as Exhibit 99.1 hereto and is incorporated herein by reference.

The information furnished pursuant to Item 2.02 and Exhibit 99.1 of this Current Report on Form 8-K shall not be deemed to be “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section. The information in this Current Report shall not be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date of this Current Report, regardless of any general incorporation language in the filing.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

(e) The information set forth under Item 1.01 of this Current Report on Form 8-K, as it relates to the Company’s executive officers, is incorporated into this Item 5.02(e) by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.1</a>	<a href="#">Form of Director Indemnification Agreement</a>
<a href="#">10.2</a>	<a href="#">Form of Officer Indemnification Agreement</a>
<a href="#">99.1</a>	<a href="#">Press release dated October 28, 2020</a>
104	Cover Page Interactive Data File - The cover page of this Current Report on Form 8-K filed on October 28, 2020, formatted in Inline XBRL

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

October 28, 2020

FARO Technologies, Inc.

/s/ Allen Muhich

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By: Allen Muhich  
Its: Chief Financial Officer  
(Duly Authorized Officer and Principal Financial Officer)

## FORM OF DIRECTOR INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of \_\_\_\_\_, 20\_\_ by and between FARO Technologies, Inc., a Florida corporation (the "Company"), and [Name of Indemnitee] ("Indemnitee").

### RECITALS

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company;

WHEREAS, in order to induce Indemnitee to provide or continue to provide services to the Company, the Company wishes to provide for the indemnification of, and advancement of expenses to, Indemnitee to the maximum extent permitted by law;

WHEREAS, the Amended and Restated Articles of Incorporation (as amended and in effect from time to time, the "Charter") and the Amended and Restated By-laws (as amended and in effect from time to time, the "By-laws") of the Company require indemnification of the officers and directors of the Company, and Indemnitee may also be entitled to indemnification pursuant to the Florida Business Corporation Act (the "FBCA");

WHEREAS, the Charter, the Bylaws and the FBCA expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the Board of Directors of the Company (the "Board") has determined that the increased difficulty in attracting and retaining highly qualified persons such as Indemnitee is detrimental to the best interests of the Company's shareholders;

WHEREAS, it is reasonable and prudent for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law, regardless of any amendment or revocation of the Charter or the Bylaws, so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Charter, the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as a director of the Company. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by law), in which event the Company

shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

## Section 2. Definitions.

As used in this Agreement:

(a) “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, as in effect on the date of this Agreement; provided, however, that no Person who is a director or officer of the Company shall be deemed an Affiliate or an Associate of any other director or officer of the Company solely as a result of his or her position as director or officer of the Company.

(b) A Person shall be deemed the “Beneficial Owner” of, and shall be deemed to “Beneficially Own” and have “Beneficial Ownership” of, any securities:

(i) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, Beneficially Owns (as determined pursuant to Rule 13d-3 of the Rules under the Exchange Act, as in effect on the date of this Agreement);

(ii) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has: (A) the legal, equitable or contractual right or obligation to acquire (whether directly or indirectly and whether exercisable immediately or only after the passage of time, compliance with regulatory requirements, satisfaction of one or more conditions (whether or not within the control of such Person) or otherwise) upon the exercise of any conversion rights, exchange rights, rights, warrants or options, or otherwise; (B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing); or (C) the right to dispose of pursuant to any agreement, arrangement or understanding (whether or not in writing) (other than customary arrangements with and between underwriters and selling group members with respect to a bona fide public offering of securities);

(iii) which are Beneficially Owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with which such Person or any of such Person’s Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting or disposing of any securities of the Company; or

(iv) that are the subject of a derivative transaction entered into by such Person or any of such Person’s Affiliates or Associates, including, for these purposes, any derivative security acquired by such Person or any of such Person’s Affiliates or Associates that gives such Person or any of such Person’s Affiliates or Associates the economic equivalent of ownership of an amount of securities due to the fact that the value of the derivative security is explicitly determined by reference to the price or value of such securities, or that provides such Person or any of such Person’s Affiliates or Associates an opportunity, directly or indirectly, to

profit or to share in any profit derived from any change in the value of such securities, in any case without regard to whether (A) such derivative security conveys any voting rights in such securities to such Person or any of such Person's Affiliates or Associates; (B) the derivative security is required to be, or capable of being, settled through delivery of such securities; or (C) such Person or any of such Person's Affiliates or Associates may have entered into other transactions that hedge the economic effect of such derivative security.

Notwithstanding the foregoing, no Person engaged in business as an underwriter of securities shall be deemed the Beneficial Owner of any securities acquired through such Person's participation as an underwriter in good faith in a firm commitment underwriting.

(c) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) Acquisition of Stock by Third Party. Any Person is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, provided that a Change of Control shall be deemed to have occurred if subsequent to such reduction such Person becomes the Beneficial Owner, directly or indirectly, of any additional securities of the Company conferring upon such Person any additional voting power;

(ii) Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(c)(i), 2(c)(iii) or 2(c)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

(iii) Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or successor entity) more than 50% of the combined voting power of the voting securities of the surviving or successor entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or successor entity;

(iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale, lease, exchange or other transfer by the Company, in one or a series of related transactions, of all or substantially all of the Company's assets; and

(v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.

(d) "Corporate Status" describes the status of a person as a current or former director of the Company or current or former director, manager, partner, officer, employee, agent or trustee of any other Enterprise which such person is or was serving at the request of the Company.

(e) "Enforcement Expenses" shall include all reasonable attorneys' fees, court costs, transcript costs, fees of experts, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other out-of-pocket disbursements or expenses of the types customarily incurred in connection with an action to enforce indemnification or advancement rights, or an appeal from such action. Expenses, however, shall not include fees, salaries, wages or benefits owed to Indemnitee.

(f) "Enterprise" shall mean any corporation (other than the Company), partnership, joint venture, trust, employee benefit plan, limited liability company, or other legal entity of which Indemnitee is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee.

(g) "Expenses" shall include all reasonable attorneys' fees, court costs, transcript costs, fees of experts, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other out-of-pocket disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding or an appeal resulting from a Proceeding. Expenses, however, shall not include amounts paid in settlement by Indemnitee, the amount of judgments or fines against Indemnitee or fees, salaries, wages or benefits owed to Indemnitee.

(h) "Independent Counsel" means a law firm, or a partner (or, if applicable, member or shareholder) of such a law firm, that is experienced in matters of Florida corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company, any subsidiary of the Company, any Enterprise or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.



(i) “Person” shall mean (i) an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, a business trust, a government or political subdivision, any unincorporated organization, or any other association or entity including any successor (by merger or otherwise) thereof or thereto, and (ii) a “group” as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

(j) The term “Proceeding” shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, regulatory or investigative nature, and whether formal or informal, in which Indemnatee was, is or will be involved as a party or otherwise by reason of the fact that Indemnatee is or was a director of the Company or is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any Enterprise or by reason of any action taken by Indemnatee or of any action taken on his or her part while acting as a director of the Company or while serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement; provided, however, that the term “Proceeding” shall not include any action, suit or arbitration, or part thereof, initiated by Indemnatee to enforce Indemnatee’s rights under this Agreement as provided for in Section 12(a) of this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnatee to the extent set forth in this Section 3 if Indemnatee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnatee shall be indemnified against all Expenses, judgments, fines, penalties, excise taxes, and amounts paid in settlement actually and reasonably incurred by Indemnatee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnatee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnatee to the extent set forth in this Section 4 if Indemnatee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnatee shall be indemnified against all Expenses actually and reasonably incurred by Indemnatee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnatee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnatee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Florida Court (as hereinafter defined) shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably

entitled to indemnification for such expenses as the Florida Court (as hereinafter defined) shall deem proper.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement and except as provided in Section 7, to the extent that Indemnatee is a party to or a participant in any Proceeding and is successful in such Proceeding or in defense of any claim, issue or matter therein, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnatee is not wholly successful in such Proceeding but is successful as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnatee against all Expenses actually and reasonably incurred by Indemnatee or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Reimbursement for Expenses of a Witness or in Response to a Subpoena. Notwithstanding any other provision of this Agreement, to the extent that Indemnatee, by reason of his or her Corporate Status, (i) is a witness in any Proceeding to which Indemnatee is not a party and is not threatened to be made a party or (ii) receives a subpoena with respect to any Proceeding to which Indemnatee is not a party and is not threatened to be made a party, the Company shall reimburse Indemnatee for all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

Section 7. Exclusions. Notwithstanding any provision in this Agreement to the contrary, the Company shall not be obligated under this Agreement:

(a) to indemnify for amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnatee has otherwise actually received such amounts under any insurance policy, contract, agreement or otherwise;

(b) to indemnify for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law, or from the purchase or sale by Indemnatee of such securities in violation of Section 306 of the Sarbanes Oxley Act of 2002 ("SOX");

(c) to indemnify with respect to any Proceeding, or part thereof, brought by Indemnatee against the Company, any legal entity which it controls, any director or officer thereof or any third party, unless (i) the Board has consented to the initiation of such Proceeding or part thereof and (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law; provided, however, that this Section 7(c) shall not apply to (A) counterclaims or affirmative defenses asserted by Indemnatee in an action brought against Indemnatee or (B) any action brought by Indemnatee for indemnification or advancement from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company in the suit for which indemnification or advancement is being sought as described in Section 12; or

(d) to provide any indemnification or advancement of expenses that is prohibited by applicable law (as such law exists at the time payment would otherwise be required pursuant to this Agreement).

Section 8. Advancement of Expenses. Subject to Section 9(b), the Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made as incurred, and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances (including any invoices received by Indemnitee, which such invoices may be redacted as necessary to avoid the waiver of any privilege accorded by applicable law) from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's (i) ability to repay the expenses, (ii) ultimate entitlement to indemnification under the other provisions of this Agreement, and (iii) entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses or covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)). The obligation of the Company to make advances pursuant to this Section 8 shall be conditioned upon delivery to the Company of an undertaking in writing by or on behalf of Indemnitee in which Indemnitee undertakes to the fullest extent required by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required. The right to advances under this paragraph shall in all events continue until final disposition of any Proceeding, including any appeal therein. Nothing in this Section 8 shall limit Indemnitee's right to advancement pursuant to Section 12(e) of this Agreement.

Section 9. Procedure for Notification and Defense of Claim.

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request therefor specifying the basis for the claim, the amounts for which Indemnitee is seeking payment under this Agreement, and all documentation related thereto as reasonably requested by the Company.

(b) In the event that the Company shall be obligated hereunder to provide indemnification for or make any advancement of Expenses with respect to any Proceeding, the Company shall be entitled to assume the defense of such Proceeding, or any claim, issue or matter therein, with counsel approved by Indemnitee (which approval shall not be unreasonably withheld or delayed) upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently employed by or on behalf of Indemnitee with respect to the same Proceeding; provided that (i) Indemnitee shall have the right to employ separate counsel in any such Proceeding at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company and the Company has agreed, as part of such authorization to cover the cost of such

separate counsel, (B) Indemnatee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnatee in the conduct of such defense, (C) the Company shall not continue to retain such counsel to defend such Proceeding, or (D) a Change of Control shall have occurred, then the fees and expenses actually and reasonably incurred by Indemnatee with respect to his or her separate counsel shall be Expenses hereunder.

(c) In the event that the Company does not assume the defense in a Proceeding pursuant to paragraph (b) above, then the Company will be entitled to participate in the Proceeding at its own expense.

(d) The Company shall not be liable to indemnify Indemnatee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's prior written consent (which consent shall not be unreasonably withheld or delayed). Without limiting the generality of the foregoing, the fact that an insurer under an applicable insurance policy delays or is unwilling to consent to such settlement or is or may be in breach of its obligations under such policy, or the fact that directors' and officers' liability insurance is otherwise unavailable or not maintained by the Company, may not be taken into account by the Company in determining whether to provide its consent. The Company shall not, without the prior written consent of Indemnatee (which consent shall not be unreasonably withheld or delayed), enter into any settlement which (i) includes an admission of fault of Indemnatee, any non-monetary remedy imposed on Indemnatee or any monetary damages for which Indemnatee is not wholly and actually indemnified hereunder or (ii) with respect to any Proceeding with respect to which Indemnatee may be or is made a party or may be otherwise entitled to seek indemnification hereunder, does not include the full release of Indemnatee from all liability in respect of such Proceeding.

#### Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnatee for indemnification pursuant to Section 9(a), a determination, if such determination is required by applicable law, with respect to Indemnatee's entitlement to indemnification hereunder shall be made in the specific case by one of the following methods: (x) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board; or (y) if a Change in Control shall not have occurred: (i) by a majority vote of the disinterested directors, even though the disinterested directors represent less than a quorum of the Board; (ii) by a committee of disinterested directors designated by a majority vote of the directors, or (iii) if there are no disinterested directors or if the disinterested directors of the Board, by a majority vote of such disinterested directors, so direct, by Independent Counsel in a written opinion to the Board. For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought. In the case that such determination is made by Independent Counsel, a copy of Independent Counsel's written opinion shall be delivered to Indemnatee and, if it is so determined that Indemnatee is entitled to indemnification, payment to Indemnatee shall be made within thirty (30) days after such determination in accordance with Section 12(a)(iii). Indemnatee shall cooperate with the Independent Counsel or the Company, as applicable, in making such determination with respect to Indemnatee's entitlement to indemnification, including providing to such Independent Counsel or the Company, upon reasonable advance request, any documentation or information which is not

privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company shall likewise cooperate with Indemnitee and Independent Counsel, if applicable, in making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such counsel and Indemnitee, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Company and reasonably necessary to such determination. Any out-of-pocket costs or expenses (including reasonable attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the Independent Counsel or the Company shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(b) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a), the Independent Counsel shall be selected by the Board if a Change in Control shall not have occurred or, if a Change in Control shall have occurred, by Indemnitee. Indemnitee or the Company, as the case may be, may, within ten (10) days after written notice of such selection, deliver to the Company or Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Florida Court (as hereinafter defined) has determined that such objection is without merit. If, in circumstances where an Independent Counsel is to be selected and within twenty (20) days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 9(a), and (ii) the final disposition of the Proceeding, including any appeal therein, no Independent Counsel shall have been selected without objection, either Indemnitee or the Company may petition the Florida Court for resolution of any objection which shall have been made by Indemnitee or the Company to the selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Florida Court or by such other person as the Florida Court shall designate. The person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) Notwithstanding anything to the contrary contained in this Agreement, the determination of entitlement to indemnification under this Agreement shall be made without regard to Indemnitee's entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses or covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)).

## Section 11. Presumptions and Effect of Certain Proceedings.

(a) To the extent permitted by applicable law, in making a determination with respect to entitlement to indemnification hereunder, it shall be presumed that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Company shall have the burden of proof and the burden of persuasion by clear and convincing evidence to overcome that presumption in connection with the making of any determination contrary to that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) Indemnitee shall be presumed to have acted in good faith if Indemnitee's actions were based in good faith reliance on (i) the records or books of account of the Company or any other Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, officers, agents or employees of the Company or any other Enterprise in the course of their duties, or on information or records given or reports made to the Company or any other Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Company or such other Enterprise or (ii) the advice of legal counsel for the Company or any other Enterprise selected with reasonable care by the Company or such other Enterprise. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. In addition, the knowledge and/or actions, or failure to act, of any director, manager, partner, officer, employee, agent or trustee of the Company, any subsidiary of the Company, or any Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 11(c) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

## Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(f), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification for which a determination is to be made other than by Independent Counsel, (iv) payment of indemnification or reimbursement of expenses is not made

pursuant to Section 5 or 6 or the last sentence of Section 10(a) of this Agreement within thirty (30) days after receipt by the Company of a written request therefor (including any invoices received by Indemnitee, which such invoices may be redacted as necessary to avoid the waiver of any privilege accorded by applicable law) or (v) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication by the Florida Court (as hereinafter defined) as to whether he or she is entitled to such indemnification or advancement. Alternatively, Indemnitee, at his or her option, may seek in arbitration (to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) an award as to whether he or she is entitled to such indemnification or advancement. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing time limitation shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to so seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(e) The Company shall indemnify Indemnitee to the fullest extent permitted by law against any and all Enforcement Expenses and, if requested by Indemnitee, shall (within thirty (30) days after receipt by the Company of a written request therefor) advance as from time to time submitted, to the extent not prohibited by law, such Enforcement Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company in the suit for which indemnification or advancement is being sought. Each such written request for advancement shall include the respective invoices received by Indemnitee in connection with such Enforcement Expenses but, in the case of any invoice in connection with legal services, any

references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law need not be included with the respective invoice.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding, including any appeal therein.

Section 13. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Florida law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, managers, partners, officers, employees, agents or trustees of the Company or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, manager, partner, officer, employee, agent or trustee under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such claim to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Upon request of Indemnitee, the Company shall also promptly provide to Indemnitee: (i) copies of all of the Company's potentially applicable directors' and officers' liability insurance policies, (ii) copies of such notices delivered to the applicable insurers, and (iii) copies of all subsequent communications and correspondence between the Company and such insurers regarding the Proceeding.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action reasonably necessary to secure such rights, including execution of such documents as are reasonably necessary to enable the Company to bring suit to enforce such rights.



(d) The Company's obligation to provide indemnification or advancement hereunder to Indemnitee who is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement from such other Enterprise.

Section 14. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee shall have ceased to serve as a director of the Company or (b) one (1) year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and his or her heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place, but the failure of the successor to provide such written agreement shall not in any way limit the obligations of such successor under this Agreement.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve or continue to serve as a director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of

the Charter, the Bylaws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnatee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment, or waiver of any provision, of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver. No supplement, modification or amendment of this Agreement or of any provision hereof shall limit or restrict any right of Indemnatee under this Agreement in respect of any action taken or omitted by such Indemnatee prior to such supplement, modification or amendment.

Section 18. Notice by Indemnatee. Indemnatee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification, reimbursement or advancement as provided hereunder. The failure of Indemnatee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnatee under this Agreement or otherwise.

Section 19. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and received for by the party to whom said notice or other communication shall have been directed, (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (iii) mailed by reputable overnight courier and received for by the party to whom said notice or other communication shall have been directed or (iv) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnatee, at such address as Indemnatee shall provide to the Company.

(b) If to the Company to:  
FARO Technologies, Inc.  
250 Technology Park  
Lake Mary, Florida 32746  
Attention: President

or to any other address as may have been furnished to Indemnatee by the Company.

Section 20. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, shall contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnatee in connection with the event(s) and/or transaction(s) giving rise to such Proceeding; and/or (ii) the relative fault of the Company (and

its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transactions.

Section 21. Internal Revenue Code Section 409A. The Company intends for this Agreement to comply with the indemnification exception under Section 1.409A-1(b)(10) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “Code”), which provides that indemnification of, or the purchase of an insurance policy providing for payments of, all or part of the expenses incurred or damages paid or payable by Indemnatee with respect to a bona fide claim against Indemnatee or the Company do not provide for a deferral of compensation, subject to Section 409A of the Code, where such claim is based on actions or failures to act by Indemnatee in his or her capacity as a service provider of the Company. The parties intend that this Agreement be interpreted and construed with such intent.

Section 22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnatee pursuant to Section 12(a) of this Agreement, the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in a state court of the State of Florida or in the District Court for the Middle District of Florida, Orlando Division (any of such courts herein referred to as the “Florida Court”), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Florida Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) consent to service of process at the address set forth in Section 19 of this Agreement with the same legal force and validity as if served upon such party personally within the State of Florida, (iv) waive any objection to the laying of venue of any such action or proceeding in the Florida Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Florida Court has been brought in an improper or inconvenient forum.

Section 23. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 24. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart’s signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement for all purposes. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 25. Monetary Damages Insufficient/Specific Enforcement. The Company and Indemnatee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnatee irreparable harm. Accordingly, the parties hereto agree that Indemnatee may enforce this

Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm (having agreed that actual and irreparable harm will result in not forcing the Company to specifically perform its obligations pursuant to this Agreement) and that by seeking injunctive relief and/or specific performance, Indemnatee shall not be precluded from seeking or obtaining any other relief to which he or she may be entitled. The Company and Indemnatee further agree that Indemnatee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnatee by the Florida Court, and the Company hereby waives any such requirement of a bond or undertaking.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

**FARO TECHNOLOGIES, INC.**

By:

Name: Michael Burger

Title: President and Chief Executive Officer

[Name of Indemnitee]

## FORM OF OFFICER INDEMNIFICATION AGREEMENT

This Indemnification Agreement (“Agreement”) is made as of \_\_\_\_\_, 20\_\_ by and between FARO Technologies, Inc., a Florida corporation (the “Company”), and [Name of Indemnitee] (“Indemnitee”).

### RECITALS

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company;

WHEREAS, in order to induce Indemnitee to provide or continue to provide services to the Company, the Company wishes to provide for the indemnification of, and advancement of expenses to, Indemnitee to the maximum extent permitted by law;

WHEREAS, the Amended and Restated Articles of Incorporation (as amended and in effect from time to time, the “Charter”) and the Amended and Restated By-laws (as amended and in effect from time to time, the “Bylaws”) of the Company require indemnification of the officers and directors of the Company, and Indemnitee may also be entitled to indemnification pursuant to the Florida Business Corporation Act (the “FBCA”);

WHEREAS, the Charter, the Bylaws and the FBCA expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the Board of Directors of the Company (the “Board”) has determined that the increased difficulty in attracting and retaining highly qualified persons such as Indemnitee is detrimental to the best interests of the Company’s shareholders;

WHEREAS, it is reasonable and prudent for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law, regardless of any amendment or revocation of the Charter or the Bylaws, so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified; and

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Charter, the Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee agrees to serve as [a director and]<sup>[1]</sup> an officer of the Company. Indemnitee may at any time and for any reason resign from [any] such position (subject to any other contractual obligation or any obligation imposed by law), in which event the Company shall have no obligation under this Agreement to

continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee.

## Section 2. Definitions.

As used in this Agreement:

- (a) “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, as in effect on the date of this Agreement; provided, however, that no Person who is a director or officer of the Company shall be deemed an Affiliate or an Associate of any other director or officer of the Company solely as a result of his or her position as director or officer of the Company.
- (b) A Person shall be deemed the “Beneficial Owner” of, and shall be deemed to “Beneficially Own” and have “Beneficial Ownership” of, any securities:
  - (i) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, Beneficially Owns (as determined pursuant to Rule 13d-3 of the Rules under the Exchange Act, as in effect on the date of this Agreement);
  - (ii) which such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has: (A) the legal, equitable or contractual right or obligation to acquire (whether directly or indirectly and whether exercisable immediately or only after the passage of time, compliance with regulatory requirements, satisfaction of one or more conditions (whether or not within the control of such Person) or otherwise) upon the exercise of any conversion rights, exchange rights, rights, warrants or options, or otherwise; (B) the right to vote pursuant to any agreement, arrangement or understanding (whether or not in writing); or (C) the right to dispose of pursuant to any agreement, arrangement or understanding (whether or not in writing) (other than customary arrangements with and between underwriters and selling group members with respect to a bona fide public offering of securities);
  - (iii) which are Beneficially Owned, directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with which such Person or any of such Person’s Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting or disposing of any securities of the Company; or

(iv) that are the subject of a derivative transaction entered into by such Person or any of such Person's Affiliates or Associates, including, for these purposes, any derivative security acquired by such Person or any of such Person's Affiliates or Associates that gives such Person or any of such Person's Affiliates or Associates the economic equivalent of ownership of an amount of securities due to the fact that the value of the derivative security is explicitly determined by reference to the price or value of such securities, or that provides such Person or any of such Person's Affiliates or Associates an opportunity, directly or indirectly, to profit or to share in any profit derived from any change in the value of such securities, in any case without regard to whether (A) such derivative security conveys any voting rights in such securities to such Person or any of such Person's Affiliates or Associates; (B) the derivative security is required to be, or capable of being, settled through delivery of such securities; or (C) such Person or any of such Person's Affiliates or Associates may have entered into other transactions that hedge the economic effect of such derivative security;

Notwithstanding the foregoing, no Person engaged in business as an underwriter of securities shall be deemed the Beneficial Owner of any securities acquired through such Person's participation as an underwriter in good faith in a firm commitment underwriting.

(c) "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

- (i) Acquisition of Stock by Third Party. Any Person is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities unless the change in relative Beneficial Ownership of the Company's securities by any Person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, provided that a Change in Control shall be deemed to have occurred if subsequent to such reduction such Person becomes the Beneficial Owner, directly or indirectly, of any additional securities of the Company conferring upon such Person any additional voting power;
- (ii) Change in Board of Directors. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(c)(i), 2(c)(iii) or 2(c)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election



or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

- (iii) Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or successor entity) more than 50% of the combined voting power of the voting securities of the surviving or successor entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving or successor entity;
  - (iv) Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale, lease, exchange or other transfer by the Company, in one or a series of related transactions, of all or substantially all of the Company's assets; and
  - (v) Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement.
- (d) "Corporate Status" describes the status of a person as a current or former [director or] officer of the Company or current or former director, manager, partner, officer, employee, agent or trustee of any other Enterprise which such person is or was serving at the request of the Company.
  - (e) "Enforcement Expenses" shall include all reasonable attorneys' fees, court costs, transcript costs, fees of experts, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other out-of-pocket disbursements or expenses of the types customarily incurred in connection with an action to enforce indemnification or advancement rights, or an appeal from such action. Expenses, however, shall not include fees, salaries, wages or benefits owed to Indemnitee.
  - (f) "Enterprise" shall mean any corporation (other than the Company), partnership, joint venture, trust, employee benefit plan, limited liability company, or other legal entity of which Indemnitee is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee.
  - (g) "Expenses" shall include all reasonable attorneys' fees, court costs, transcript costs, fees of experts, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other out-of-

pocket disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding or an appeal resulting from a Proceeding. Expenses, however, shall not include amounts paid in settlement by Indemnitee, the amount of judgments or fines against Indemnitee or fees, salaries, wages or benefits owed to Indemnitee.

- (h) “Independent Counsel” means a law firm, or a partner (or, if applicable, member or shareholder) of such a law firm, that is experienced in matters of Florida corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company, any subsidiary of the Company, any Enterprise or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.
- (i) “Person” shall mean (i) an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, a business trust, a government or political subdivision, any unincorporated organization, or any other association or entity including any successor (by merger or otherwise) thereof or thereto, and (ii) a “group” as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.
- (j) The term “Proceeding” shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative, regulatory or investigative nature, and whether formal or informal, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was [a director or] an officer of the Company or is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any Enterprise or by reason of any action taken by Indemnitee or of any action taken on his or her part while acting as [a director or] an officer of the Company or while serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement or advancement of expenses can be provided under this Agreement; provided, however, that the term “Proceeding” shall not include any action, suit or arbitration, or part thereof, initiated by Indemnitee to enforce

Indemnitee's rights under this Agreement as provided for in Section 12(a) of this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee to the extent set forth in this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified against all Expenses, judgments, fines, penalties, excise taxes, and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee to the extent set forth in this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that the Florida Court (as hereinafter defined) shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Florida Court (as hereinafter defined) shall deem proper.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement and except as provided in Section 7, to the extent that Indemnitee is a party to or a participant in any Proceeding and is successful in such Proceeding or in defense of any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

Section 6. Reimbursement for Expenses of a Witness or in Response to a Subpoena. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee, by reason of his or her Corporate Status, (i) is a witness in any Proceeding to which

Indemnatee is not a party and is not threatened to be made a party or (ii) receives a subpoena with respect to any Proceeding to which Indemnatee is not a party and is not threatened to be made a party, the Company shall reimburse Indemnatee for all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

Section 7. Exclusions. Notwithstanding any provision in this Agreement to the contrary, the Company shall not be obligated under this Agreement:

- (a) to indemnify for amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnatee has otherwise actually received such amounts under any insurance policy, contract, agreement or otherwise;
- (b) to indemnify for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law, or from the purchase or sale by Indemnatee of such securities in violation of Section 306 of the Sarbanes-Oxley Act of 2002 ("SOX");
- (c) to indemnify for any reimbursement of, or payment to, the Company by Indemnatee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnatee from the sale of securities of the Company pursuant to Section 304 of SOX or any formal policy of the Company adopted by the Board (or a committee thereof), or any other remuneration paid to Indemnatee if it shall be determined by a final judgment or other final adjudication that such remuneration was in violation of law;
- (d) to indemnify with respect to any Proceeding, or part thereof, brought by Indemnatee against the Company, any legal entity which it controls, any director or officer thereof or any third party, unless (i) the Board has consented to the initiation of such Proceeding or part thereof and (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law; provided, however, that this Section 7(d) shall not apply to (A) counterclaims or affirmative defenses asserted by Indemnatee in an action brought against Indemnatee or (B) any action brought by Indemnatee for indemnification or advancement from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company in the suit for which indemnification or advancement is being sought as described in Section 12; or
- (e) to provide any indemnification or advancement of expenses that is prohibited by applicable law (as such law exists at the time payment would otherwise be required pursuant to this Agreement).

Section 8. Advancement of Expenses. Subject to Section 9(b), the Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made as incurred, and such advancement shall be made within thirty (30) days after the receipt by the Company of a statement or statements requesting such advances (including any invoices received by Indemnitee, which such invoices may be redacted as necessary to avoid the waiver of any privilege accorded by applicable law) from time to time, whether prior to or after final disposition of any Proceeding. Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's (i) ability to repay the expenses, (ii) ultimate entitlement to indemnification under the other provisions of this Agreement, and (iii) entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses or covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)). The obligation of the Company to make advances pursuant to this Section 8 shall be conditioned upon delivery to the Company of an undertaking in writing by or on behalf of Indemnitee in which Indemnitee undertakes to the fullest extent required by law to repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. No other form of undertaking shall be required. The right to advances under this paragraph shall in all events continue until final disposition of any Proceeding, including any appeal therein. Nothing in this Section 8 shall limit Indemnitee's right to advancement pursuant to Section 12(e) of this Agreement.

Section 9. Procedure for Notification and Defense of Claim.

- (a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request therefor specifying the basis for the claim, the amounts for which Indemnitee is seeking payment under this Agreement, and all documentation related thereto as reasonably requested by the Company.
- (b) In the event that the Company shall be obligated hereunder to provide indemnification for or make any advancement of Expenses with respect to any Proceeding, the Company shall be entitled to assume the defense of such Proceeding, or any claim, issue or matter therein, with counsel approved by Indemnitee (which approval shall not be unreasonably withheld or delayed) upon the delivery to Indemnitee of written notice of the Company's election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees or expenses of separate counsel subsequently employed by or on behalf of Indemnitee with respect to the same Proceeding; provided that (i) Indemnitee shall have the right to employ separate counsel in any such Proceeding at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company and the Company has agreed, as part of such authorization to cover the cost of such separate counsel, (B) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in

the conduct of such defense, (C) the Company shall not continue to retain such counsel to defend such Proceeding, or (D) a Change in Control shall have occurred, then the fees and expenses actually and reasonably incurred by Indemnitee with respect to his or her separate counsel shall be Expenses hereunder.

- (c) In the event that the Company does not assume the defense in a Proceeding pursuant to paragraph (b) above, then the Company will be entitled to participate in the Proceeding at its own expense.
- (d) The Company shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's prior written consent (which consent shall not be unreasonably withheld or delayed). Without limiting the generality of the foregoing, the fact that an insurer under an applicable insurance policy delays or is unwilling to consent to such settlement or is or may be in breach of its obligations under such policy, or the fact that directors' and officers' liability insurance is otherwise unavailable or not maintained by the Company, may not be taken into account by the Company in determining whether to provide its consent. The Company shall not, without the prior written consent of Indemnitee (which consent shall not be unreasonably withheld or delayed), enter into any settlement which (i) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or any monetary damages for which Indemnitee is not wholly and actually indemnified hereunder or (ii) with respect to any Proceeding with respect to which Indemnitee may be or is made a party or may be otherwise entitled to seek indemnification hereunder, does not include the full release of Indemnitee from all liability in respect of such Proceeding.

#### Section 10. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 9(a), a determination, if such determination is required by applicable law, with respect to Indemnitee's entitlement to indemnification hereunder shall be made in the specific case by one of the following methods: [(x) if a Change in Control shall have occurred and indemnification is being requested by Indemnitee hereunder in his or her capacity as a director of the Company, by Independent Counsel in a written opinion to the Board; or (y) in any other case,] (i) by a majority vote of the disinterested directors, even though the disinterested directors represent less than a quorum of the Board; (ii) by a committee of disinterested directors designated by a majority vote of the directors; or (iii) if there are no disinterested directors or if the disinterested directors of the Board, by a majority vote of such disinterested directors, so direct, by Independent Counsel in a written opinion to the Board. For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought. In the case that such determination is made by Independent Counsel, a copy of Independent Counsel's written opinion shall be delivered to Indemnitee and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within thirty (30) days after such determination in accordance with Section

12(a)(iii). Indemnitee shall cooperate with the Independent Counsel or the Company, as applicable, in making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such Independent Counsel or the Company, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. The Company shall likewise cooperate with Indemnitee and Independent Counsel, if applicable, in making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such counsel and Indemnitee, upon reasonable advance request, any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Company and reasonably necessary to such determination. Any out-of-pocket costs or expenses (including reasonable attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the Independent Counsel or the Company shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(b) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a), the Independent Counsel shall be selected by the Board[; provided that, if a Change in Control shall have occurred and indemnification is being requested by Indemnitee hereunder in his or her capacity as a director of the Company, the Independent Counsel shall be selected by Indemnitee]. Indemnitee [or the Company, as the case may be,] may, within ten (10) days after written notice of such selection, deliver to the Company [or Indemnitee, as the case may be,] a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Florida Court (as hereinafter defined) has determined that such objection is without merit. If, in circumstances where an Independent Counsel is to be selected and within twenty (20) days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 9(a), and (ii) the final disposition of the Proceeding, including any appeal therein, no Independent Counsel shall have been selected without objection, either Indemnitee or the Company may petition the Florida Court for resolution of any objection which shall have been made by Indemnitee or the Company to the selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Florida Court or by such other person as the Florida Court shall designate. The person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(c) Notwithstanding anything to the contrary contained in this Agreement, the determination of entitlement to indemnification under this Agreement shall be made without regard to the Indemnitee's entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses or covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)).

Section 11. Presumptions and Effect of Certain Proceedings.

- (a) To the extent permitted by applicable law, in making a determination with respect to entitlement to indemnification hereunder, it shall be presumed that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 9(a) of this Agreement, and the Company shall have the burden of proof and the burden of persuasion by clear and convincing evidence to overcome that presumption in connection with the making of any determination contrary to that presumption.
- (b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of guilty, nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.
- (c) Indemnitee shall be presumed to have acted in good faith if Indemnitee's actions were based in good faith reliance on (i) the records or books of account of the Company or any other Enterprise, including financial statements, or on information supplied to Indemnitee by the directors, officers, agents or employees of the Company or any other Enterprise in the course of their duties, or on information or records given or reports made to the Company or any other Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Company or such other Enterprise or (ii) with the advice of legal counsel for the Company or any other Enterprise selected with reasonable care by the Company or such other Enterprise. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement. In addition, the knowledge and/or actions, or failure to act, of any director, manager, partner, officer, employee, agent or trustee of the Company, any subsidiary of the Company, or any Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 11(c) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.



Section 12. Remedies of Indemnitee.

- (a) Subject to Section 12(f), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification for which a determination is to be made other than by Independent Counsel, (iv) payment of indemnification or reimbursement of expenses is not made pursuant to Section 5 or 6 or the last sentence of Section 10(a) of this Agreement within thirty (30) days after receipt by the Company of a written request therefor (including any invoices received by Indemnitee, which such invoices may be redacted as necessary to avoid the waiver of any privilege accorded by applicable law) or (v) payment of indemnification pursuant to Section 3 or 4 of this Agreement is not made within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication by the Florida Court (as hereinafter defined) as to whether he or she is entitled to such indemnification or advancement. Alternatively, Indemnitee, at his or her option, may seek in arbitration (to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association) an award as to whether he or she is entitled to such indemnification or advancement. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing time limitation shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to so seek any such adjudication or award in arbitration.
- (b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement, as the case may be
- (c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.
- (d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or

before any such arbitrator that the Company is bound by all the provisions of this Agreement.

- (e) The Company shall indemnify Indemnitee to the fullest extent permitted by law against any and all Enforcement Expenses and, if requested by Indemnitee, shall (within thirty (30) days after receipt by the Company of a written request therefor) advance, as from time to time submitted, to the extent not prohibited by law, such Enforcement Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advancement from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company in the suit for which indemnification or advancement is being sought. Each such written request for advancement shall include the respective invoices received by Indemnitee in connection with such Enforcement Expenses but, in the case of any invoice in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law need not be included with the respective invoice.
- (f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding, including any appeal therein.

Section 13. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

- (a) The rights of indemnification and to receive advancement as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Charter, the Bylaws, any agreement, a vote of shareholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in Florida law, whether by statute or judicial decision, permits greater indemnification or advancement than would be afforded currently under the Charter, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.
- (b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, managers, partners, officers, employees, agents or trustees of the Company or of any other Enterprise, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, manager, partner, officer, employee, agent or trustee under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in

effect, the Company shall give prompt notice of such claim to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies. Upon request of Indemnitee, the Company shall also promptly provide to Indemnitee: (i) copies of all of the Company's potentially applicable directors' and officers' liability insurance policies, (ii) copies of such notices delivered to the applicable insurers, and (iii) copies of all subsequent communications and correspondence between the Company and such insurers regarding the Proceeding.

- (c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action reasonably necessary to secure such rights, including execution of such documents as are reasonably necessary to enable the Company to bring suit to enforce such rights.
- (d) The Company's obligation to provide indemnification or advancement hereunder to Indemnitee who is or was serving at the request of the Company as a director, manager, partner, officer, employee, agent or trustee of any other Enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement from such other Enterprise.

Section 14. Duration of Agreement. This Agreement shall continue until and terminate upon the later of: (a) ten (10) years after the date that Indemnitee is no longer servicing the Company as either a director or an officer of the Company or (b) one (1) year after the final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder and of any proceeding commenced by Indemnitee pursuant to Section 12 of this Agreement relating thereto. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitee and his or her heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place, but the failure of the successor to provide such written agreement shall not in any way limit the obligations of such successor under this Agreement.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent

of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement.

- (a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve or continue to serve as [a director and] an officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as [a director and] an officer of the Company.
- (b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Charter, the Bylaws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification or amendment, or waiver of any provision, of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver. No supplement, modification or amendment of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee prior to such supplement, modification or amendment.

Section 18. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification, reimbursement or advancement as provided hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise.

Section 19. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (iii) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (iv) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

- (a) If to Indemnitee, at such address as Indemnitee shall provide to the Company.

(b) If to the Company to:

FARO Technologies, Inc.  
250 Technology Park  
Lake Mary, Florida 32746  
Attention: President

or to any other address as may have been furnished to Indemnitee by the Company.

Section 20. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any Proceeding in such proportion as is deemed fair and reasonable in light of all of the circumstances in order to reflect (i) the relative benefits received by the Company and Indemnitee in connection with the event(s) and/or transaction(s) giving rise to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transactions.

Section 21. Internal Revenue Code Section 409A. The Company intends for this Agreement to comply with the indemnification exception under Section 1.409A-1(b)(10) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code"), which provides that indemnification of, or the purchase of an insurance policy providing for payments of, all or part of the expenses incurred or damages paid or payable by Indemnitee with respect to a bona fide claim against Indemnitee or the Company do not provide for a deferral of compensation, subject to Section 409A of the Code, where such claim is based on actions or failures to act by Indemnitee in his or her capacity as a service provider of the Company. The parties intend that this Agreement be interpreted and construed with such intent

Section 22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in a state court of the State of Florida or in the District Court for the Middle District of Florida, Orlando Division (any of such courts herein referred to as the "Florida Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Florida Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) consent to service of process at the address set forth in Section 19 of this Agreement with the same legal force and validity as if served upon such party personally within the State of Florida, (iv) waive any objection to the laying of venue of any such action or proceeding in the Florida Court, and (v) waive, and agree not to plead or to make,

any claim that any such action or proceeding brought in the Florida Court has been brought in an improper or inconvenient forum.

Section 23. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 24. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart's signature page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement for all purposes. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 25. Monetary Damages Insufficient/Specific Enforcement. The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm (having agreed that actual and irreparable harm will result in not forcing the Company to specifically perform its obligations pursuant to this Agreement) and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he or she may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. The Company acknowledges that in the absence of a waiver, a bond or undertaking may be required of Indemnitee by the Florida Court, and the Company hereby waives any such requirement of a bond or undertaking.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

**FARO TECHNOLOGIES, INC.**

By:

Name: Michael Burger Title: President and Chief Executive Officer

[Name of Indemnitee]



**PRESS RELEASE**  
For Immediate Release

## **FARO Announces Third Quarter Financial Results**

**LAKE MARY, FL**, October 28, 2020 - FARO® (Nasdaq: FARO), a global leader of 3D measurement, imaging and realization solutions for the 3D Metrology, AEC (Architecture, Engineering & Construction), and Public Safety Analytics markets, today announced its financial results for the third quarter ended September 30, 2020.

"In the third quarter we saw improving sequential performance as global economies began to reopen and our customers resumed their capital investment plans. Additionally, we continued to progress on our strategic initiatives both organically with positive customer response to our recently announced new products and inorganically with our Digital Twin initiative enabled through the August acquisition of Advanced Technical Solutions ("ATS)," stated Michael Burger, President and Chief Executive Officer. "While near-term demand remains below the 2019 level, we have gained confidence that our second quarter represents the trough in demand, as we continue to experience increased customer activity levels. As importantly, as evidenced by our third quarter results, we expect the cost reduction actions taken earlier this year will drive strong operating leverage and profit growth as demand returns to normalized levels."

### **Third Quarter 2020 Financial Summary.**

Total sales were \$70.7 million for third quarter 2020 representing a 17% sequential quarterly increase when compared to \$60.6 million in the second quarter 2020, and a 22% decrease when compared with \$90.5 million for third quarter 2019. The sales level fluctuations were primarily a result of the COVID-19 impact on customer demand in our served markets. Similarly, new order bookings of \$72.0 million increased 17% sequentially compared to \$61.4 million in the second quarter 2020, but were down 24% when compared to \$94.9 million for the third quarter 2019.

Gross margin was 51.3% for the third quarter 2020, as compared to 56.1% for the same prior year period. Non-GAAP gross margin was 51.5% for the third quarter 2020 compared to 56.4% for the third quarter 2019. The



annual decrease in gross margin was primarily a result of the impact of lower sales resulting from the COVID-19 pandemic.

Operating expense, which includes \$0.2 million of non-recurring charges, was \$41.2 million for the third quarter 2020, as compared to \$56.7 million for the same prior year period. Non-GAAP operating expense was \$38.5 million for the third quarter 2020 compared to \$51.1 million for the third quarter 2019.

Net loss was \$3.0 million, or \$0.17 per share, for the third quarter 2020, as compared to a net loss of \$6.2 million, or \$0.36 per share, for the third quarter 2019. Non-GAAP net loss was \$1.3 million, or \$0.08 per share, for the third quarter 2020 compared to Non-GAAP net loss of \$0.2 million, or \$0.01 per share, for the third quarter 2019.

Adjusted EBITDA was \$0.8 million, or 1% of Non-GAAP total sales, for the third quarter of 2020 compared to Adjusted EBITDA of \$3.8 million, or 4% of Non-GAAP total sales, for the third quarter of 2019.

\*A reconciliation of the non-GAAP financial measures to the most directly comparable GAAP financial measures is provided in the financial schedules portion at the end of this press release. An additional explanation of these measures is included below under the heading "Non-GAAP Financial Measures".

The Company's cash and short-term investments decreased \$10.3 million to \$163.6 million as of the end of the third quarter of 2020, and the Company remained debt-free.

### **Conference Call**

The Company will host a conference call to discuss these results on Thursday, October 29, 2020 at 8:00 a.m. ET. Interested parties can access the conference call by dialing (800) 459-5346 (U.S.) or +1 (203) 518-9544 (International) and using the passcode FARO. A live webcast will be available in the Investor Relations section of FARO's website at: <https://www.faro.com/about-faro/investor-relations/events>

A replay webcast will be available in the Investor Relations section of the company's web site approximately two hours after the conclusion of the call and will remain available for approximately 30 calendar days.

## **About FARO**

For 40 years, FARO has provided industry-leading technology solutions that enable customers to quickly and easily measure their world, and then use that data to make smarter decisions faster. FARO continues to be a pioneer in bridging the digital and physical worlds through data-driven reliable accuracy, precision and immediacy. For more information, visit <http://www.faro.com>

## **Non-GAAP Financial Measures**

This press release contains information about our financial results that are not presented in accordance with U.S. generally accepted accounting principles ("GAAP"). These non-GAAP financial measures, including non-GAAP total sales, non-GAAP gross margin, non-GAAP operating expenses, non-GAAP net (loss) income and non-GAAP net (loss) income per share, exclude the GSA sales adjustment (as defined in the tables below), the impact of purchase accounting intangible amortization expense, stock-based compensation, advisory fees incurred related to the GSA Matter (as defined in the tables below), imputed interest expense recorded related to the GSA Matter, executive severance costs, executive sign-on bonuses and relocation costs, Present4D impairment charges, restructuring charges, and other tax adjustments, and are provided to enhance investors' overall understanding of our historical operations and financial performance.

In addition, we present Adjusted EBITDA, which is calculated as net loss before interest expense, net, income tax benefit and depreciation and amortization, excluding (gain) loss on foreign currency transactions, the GSA sales adjustment, stock-based compensation, advisory fees incurred related to the GSA Matter, executive severance costs, executive sign-on bonuses and relocation costs, Present4D impairment charges, and restructuring costs, as measures of our operating profitability. The most directly comparable GAAP measure to Adjusted EBITDA is net loss.

Management believes that these non-GAAP financial measures provide investors with relevant period-to-period comparisons of our core operations using the same methodology that management employs in its review of the Company's operating results. These financial measures are not recognized terms under GAAP and should not be considered in isolation or as a substitute for a measure of financial performance prepared in accordance with GAAP. These non-GAAP financial measures have limitations that should be considered before using these measures to evaluate a company's financial performance. These non-GAAP financial measures, as presented, may not be comparable to similarly titled measures of other companies due to varying methods of calculation. The financial statement tables that accompany this press release include a reconciliation of these non-GAAP financial measures to the most directly comparable GAAP financial measures.

## **Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 that are subject to risks and uncertainties, such as statements about demand for and customer acceptance of FARO's products, FARO's strategic and restructuring plans and initiatives, including but not limited to the additional restructuring charges expected to be incurred in connection with FARO's restructuring plan and the timing and amount of cost savings and other benefits expected to be realized from the restructuring plan and go-to-market strategy, FARO's ability to achieve strategic objectives and other benefits expected to be realized from the Company's acquisition of the ATS business, and FARO's growth and profitability potential. Statements that are not historical facts or that describe the Company's plans, objectives, projections, expectations, assumptions, strategies, or goals are forward-looking statements. In addition, words such as "expects," "anticipates," "intends," "plans," "believes," "seeks," "estimates" or words of similar meaning or discussions of FARO's plans or other intentions identify forward-looking statements. Forward-looking statements are not guarantees of future performance and are subject to various known and unknown risks, uncertainties, and other factors that may cause actual results, performances, or achievements to differ materially from future results, performances, or achievements expressed or implied by such forward-looking statements. Consequently, undue reliance should not be placed on these forward-looking statements.

Factors that could cause actual results to differ materially from what is expressed or forecasted in such forward-looking statements include, but are not limited to:

- the Company's inability to realize the intended benefits of its undertaking to transition to a company that is reorganized around functions to improve the efficiency of its sales organization and to improve operational effectiveness;
- the Company's inability to successfully execute its new strategic plan and restructuring plan, including but not limited to additional impairment charges and/or higher than expected severance costs and exit costs, and its inability to realize the expected benefits of such plans;
- the Company's inability to realize the intended benefits of the technology, products, operations, contracts and personnel of the ATS business;
- the outcome of the U.S. Government's review of, or investigation into, the GSA Matter; any resulting penalties, damages, or sanctions imposed on the Company and the outcome of any resulting litigation to which the Company may become a party; loss of future government sales; and potential impacts on customer and supplier relationships and the Company's reputation;
- development by others of new or improved products, processes or technologies that make the Company's products less competitive or obsolete;
- the Company's inability to maintain its technological advantage by developing new products and enhancing its existing products;
- declines or other adverse changes, or lack of improvement, in industries that the Company serves or the domestic and international economies in the regions of the world where the Company operates and other general economic, business, and financial conditions;
- the effect of the COVID-19 pandemic, including on our business operations, as well as its impact on general economic and financial market conditions;
- the impact of fluctuations in foreign exchange rates; and
- other risks detailed in Part I, Item 1A. Risk Factors in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 and in Part II, Item 1A. Risk Factors in the Company's Quarterly Report on Form 10-Q for the quarters ended March 31, 2020, June 30, 2020 and September 30, 2020.

Forward-looking statements in this release represent the Company's judgment as of the date of this release. The Company undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events, or otherwise, unless otherwise required by law.

#### **Investor Contacts**

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**FARO TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(UNAUDITED)**

(in thousands, except share and per share data)	Three Months Ended		Nine Months Ended	
	September 30, 2020	September 30, 2019	September 30, 2020	September 30, 2019
<b>Sales</b>				
Product	\$ 48,082	\$ 66,788	\$ 146,866	\$ 209,411
Service	22,654	23,728	63,949	68,213
Total sales	<u>70,736</u>	<u>90,516</u>	<u>210,815</u>	<u>277,624</u>
<b>Cost of Sales</b>				
Product	22,413	27,086	66,812	85,542
Service	12,025	12,658	34,936	37,551
Total cost of sales	<u>34,438</u>	<u>39,744</u>	<u>101,748</u>	<u>123,093</u>
<b>Gross Profit</b>	<u>36,298</u>	<u>50,772</u>	<u>109,067</u>	<u>154,531</u>
<b>Operating Expenses</b>				
Selling, general and administrative	30,163	45,880	96,523	131,909
Research and development	10,754	10,783	31,355	33,048
Restructuring costs	239	—	14,563	—
Total operating expenses	<u>41,156</u>	<u>56,663</u>	<u>142,441</u>	<u>164,957</u>
<b>Loss from operations</b>	<u>(4,858)</u>	<u>(5,891)</u>	<u>(33,374)</u>	<u>(10,426)</u>
<b>Other (income) expense</b>				
Interest expense (income), net	161	(24)	407	72
Other (income) expense, net	(256)	514	334	2,398
<b>Loss before income tax benefit</b>	<u>(4,763)</u>	<u>(6,381)</u>	<u>(34,115)</u>	<u>(12,896)</u>
<b>Income tax benefit</b>	<u>(1,739)</u>	<u>(182)</u>	<u>(7,336)</u>	<u>(444)</u>
<b>Net loss</b>	<u>\$ (3,024)</u>	<u>\$ (6,199)</u>	<u>\$ (26,779)</u>	<u>\$ (12,452)</u>
<b>Net loss per share - Basic</b>	<u>\$ (0.17)</u>	<u>\$ (0.36)</u>	<u>\$ (1.51)</u>	<u>\$ (0.72)</u>
<b>Net loss per share - Diluted</b>	<u>\$ (0.17)</u>	<u>\$ (0.36)</u>	<u>\$ (1.51)</u>	<u>\$ (0.72)</u>
<b>Weighted average shares - Basic</b>	<u>17,797,390</u>	<u>17,367,228</u>	<u>17,757,359</u>	<u>17,352,386</u>
<b>Weighted average shares - Diluted</b>	<u>17,797,390</u>	<u>17,367,228</u>	<u>17,757,359</u>	<u>17,352,386</u>

**FARO TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

(in thousands, except share and per share data)	September 30, 2020 (unaudited)	December 31, 2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 163,637	\$ 133,634
Short-term investments	—	24,870
Accounts receivable, net	47,533	76,162
Inventories, net	50,004	58,554
Prepaid expenses and other current assets	23,566	28,996
Total current assets	284,740	322,216
Non-current assets:		
Property, plant and equipment, net	22,962	26,954
Operating lease right-of-use asset	15,060	18,418
Goodwill	55,640	49,704
Intangible assets, net	13,475	14,471
Service and sales demonstration inventory, net	33,181	33,349
Deferred income tax assets, net	23,833	18,766
Other long-term assets	2,835	2,964
Total assets	\$ 451,726	\$ 486,842
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 9,096	\$ 13,718
Accrued liabilities	37,622	38,072
Income taxes payable	211	5,182
Current portion of unearned service revenues	37,523	39,211
Customer deposits	3,912	3,108
Lease liability	5,089	6,674
Total current liabilities	93,453	105,965
Unearned service revenues - less current portion	19,354	20,578
Lease liability - less current portion	11,781	13,698
Deferred income tax liabilities	734	357
Income taxes payable - less current portion	12,058	13,177
Other long-term liabilities	1,016	1,075
Total liabilities	138,396	154,850
Shareholders' equity:		
Common stock - par value \$.001, 50,000,000 shares authorized; 19,231,375 and 18,988,379 issued, respectively; 17,832,934 and 17,576,618 outstanding, respectively	19	19
Additional paid-in capital	276,779	267,868
Retained earnings	86,100	112,879
Accumulated other comprehensive loss	(18,526)	(17,399)
Common stock in treasury, at cost; 1,398,441 and 1,411,761 shares, respectively	(31,042)	(31,375)
Total shareholders' equity	313,330	331,992
Total liabilities and shareholders' equity	\$ 451,726	\$ 486,842

**FARO TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(UNAUDITED)

(in thousands)	Nine Months Ended	
	September 30, 2020	September 30, 2019
<b>Cash flows from:</b>		
<b>Operating activities:</b>		
Net loss	\$ (26,779)	\$ (12,452)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	10,631	14,203
Stock-based compensation	6,428	8,703
Provisions for bad debts, net of recoveries	435	1,000
Loss on disposal of assets	351	552
Provision for excess and obsolete inventory	778	2,431
Deferred income tax benefit	(4,961)	(69)
Impairment charge on equity method investment	—	1,535
Change in operating assets and liabilities:		
Decrease (Increase) in:		
Accounts receivable	28,132	21,883
Inventories	5,101	(9,471)
Prepaid expenses and other current assets	9,391	640
Increase (Decrease) in:		
Accounts payable and accrued liabilities	(10,006)	(6,934)
Income taxes payable	(6,109)	(3,679)
Customer deposits	815	(685)
Unearned service revenues	(3,391)	5,809
Net cash provided by operating activities	10,816	23,466
<b>Investing activities:</b>		
Purchases of property and equipment	(2,833)	(5,922)
Proceeds from sale of investments	25,000	33,700
Purchases of investments	—	(33,700)
Proceeds from asset sales	768	—
Payments for intangible assets	(813)	(2,035)
Acquisition of business, net of cash received	(6,036)	—
Loan originated to affiliate	—	(549)
Net cash provided by (used in) investing activities	16,086	(8,506)
<b>Financing activities:</b>		
Payments on finance leases	(237)	(273)
Payments of contingent consideration for acquisitions	(733)	(3,101)
Payments for taxes related to net share settlement of equity awards	(2,568)	(1,389)
Proceeds from issuance of stock related to stock option exercises	5,384	2,328
Net cash provided by (used in) financing activities	1,846	(2,435)
Effect of exchange rate changes on cash and cash equivalents	1,255	(2,225)
Increase in cash and cash equivalents	30,003	10,300
Cash and cash equivalents, beginning of period	133,634	108,783
Cash and cash equivalents, end of period	\$ 163,637	\$ 119,083

**FARO TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**RECONCILIATION OF GAAP TO NON-GAAP**  
(UNAUDITED)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
<i>(dollars in thousands, except per share data)</i>				
Total sales, as reported	\$ 70,736	\$ 90,516	\$ 210,815	\$ 277,624
GSA sales adjustment <sup>(1)</sup>	—	—	608	5,840
Non-GAAP total sales	<u>\$ 70,736</u>	<u>\$ 90,516</u>	<u>\$ 211,423</u>	<u>\$ 283,464</u>
Gross profit, as reported	\$ 36,298	\$ 50,772	\$ 109,067	\$ 154,531
GSA sales adjustment <sup>(1)</sup>	—	—	608	5,840
Stock-based compensation <sup>(2)</sup>	127	270	491	770
Non-GAAP adjustments to gross profit	127	270	1,099	6,610
Non-GAAP gross profit	<u>\$ 36,425</u>	<u>\$ 51,042</u>	<u>\$ 110,166</u>	<u>\$ 161,141</u>
Gross margin, as reported	51.3 %	56.1 %	51.7 %	55.7 %
Non-GAAP gross margin	51.5 %	56.4 %	52.1 %	56.8 %
Operating expenses, as reported	\$ 41,156	\$ 56,663	\$ 142,441	\$ 164,957
Advisory fees for GSA Matter <sup>(3)</sup>	—	—	—	(1,244)
Stock-based compensation <sup>(2)</sup>	(1,957)	(3,117)	(5,937)	(7,933)
Restructuring costs <sup>(4)</sup>	(239)	—	(14,563)	—
Executive severance costs	—	(1,217)	—	(1,217)
Executive sign-on bonuses & relocation costs	—	(270)	—	(845)
Purchase accounting intangible amortization	(493)	(924)	(1,465)	(2,665)
Non-GAAP adjustments to operating expenses	(2,689)	(5,528)	(21,965)	(13,904)
Non-GAAP operating expenses	<u>\$ 38,467</u>	<u>\$ 51,135</u>	<u>\$ 120,476</u>	<u>\$ 151,053</u>
Loss from operations, as reported	\$ (4,858)	\$ (5,891)	\$ (33,374)	\$ (10,426)
Non-GAAP adjustments to gross profit	127	270	1,099	6,610
Non-GAAP adjustments to operating expenses	2,689	5,528	21,965	13,904
Non-GAAP (loss) income from operations	<u>\$ (2,042)</u>	<u>\$ (93)</u>	<u>\$ (10,310)</u>	<u>\$ 10,088</u>
Other (income) expense, net, as reported	\$ (95)	\$ 490	\$ 741	\$ 2,470
Interest expense increase due to GSA sales adjustment <sup>(1)</sup>	(161)	(145)	(559)	(632)
Present4D impairment <sup>(5)</sup>	—	—	—	(1,535)
Non-GAAP adjustments to other expense, net	(161)	(145)	(559)	(2,167)
Non-GAAP other (income) expense, net	<u>\$ (256)</u>	<u>\$ 345</u>	<u>\$ 182</u>	<u>\$ 303</u>
Net loss, as reported	\$ (3,024)	\$ (6,199)	\$ (26,779)	\$ (12,452)
Non-GAAP adjustments to gross profit	127	270	1,099	6,610
Non-GAAP adjustments to operating expenses	2,689	5,528	21,965	13,904
Non-GAAP adjustments to other expense, net	161	145	559	2,167
Income tax effect of non-GAAP adjustments	(1,292)	(1,452)	(4,930)	(4,484)
Other tax adjustments <sup>(6)</sup>	—	1,555	—	2,419
Non-GAAP net (loss) income	<u>\$ (1,339)</u>	<u>\$ (153)</u>	<u>\$ (8,086)</u>	<u>\$ 8,164</u>
Net loss per share - Diluted, as reported	\$ (0.17)	\$ (0.36)	\$ (1.51)	\$ (0.72)
GSA sales adjustment <sup>(1)</sup>	—	0.00	0.03	0.34
Stock-based compensation <sup>(2)</sup>	0.12	0.19	0.36	0.50
Advisory fees for GSA Matter <sup>(3)</sup>	—	—	—	0.07
Restructuring costs <sup>(4)</sup>	0.01	—	0.82	—

Executive severance costs	—	0.07	—	0.07
Executive sign-on bonuses & relocation costs	—	0.02	—	0.05
Purchase accounting intangible amortization	0.03	0.05	0.08	0.15
Interest expense increase due to GSA sales adjustment <sup>(1)</sup>	0.01	0.01	0.03	0.04
Present4D impairment <sup>(5)</sup>	—	—	—	0.09
Income tax effect of non-GAAP adjustments	(0.08)	(0.08)	(0.27)	(0.26)
Other tax adjustments <sup>(6)</sup>	—	0.09	—	0.14
Non-GAAP net (loss) income per share - Diluted	<u>\$ (0.08)</u>	<u>\$ (0.01)</u>	<u>\$ (0.46)</u>	<u>\$ 0.47</u>

<sup>(1)</sup> Late in the fourth quarter of 2018, during an internal review we preliminarily determined that certain of our pricing practices may have resulted in the U.S. Government being overcharged under our General Services Administration (“GSA”) Federal Supply Schedule contracts (the “Contracts”) (the “GSA Matter”). We retained outside legal counsel and forensic accountants to conduct a comprehensive review of our pricing and other practices under the Contracts (the “Review”). During the nine months ended September 30, 2020 and September 30, 2019, we reduced our total sales by \$0.6 million and \$5.8 million, respectively, (the “GSA sales adjustment”) and recorded imputed interest expense of \$0.6 million and \$0.6 million, respectively, related to the GSA Matter.

<sup>(2)</sup> We exclude stock-based compensation, which is non-cash, from the non-GAAP financial measures because the Company believes that such exclusion provides a better comparison of results of ongoing operations for current and future periods with such results from past periods.

<sup>(3)</sup> In connection with the GSA Matter, we retained outside legal counsel and forensic accountants to conduct the Review, which resulted in \$1.2 million in advisory fees incurred during the nine months ended September 30, 2019.

<sup>(4)</sup> On February 14, 2020, our Board of Directors approved a global restructuring plan (the “Restructuring Plan”), which is intended to support our strategic plan in an effort to improve operating performance and ensure that we are appropriately structured and resourced to deliver increased and sustainable value to our shareholders and customers. In connection with the Restructuring Plan, we recorded a pre-tax charge of approximately \$14.6 million during the first nine months of 2020 primarily consisting of severance and related benefits.

<sup>(5)</sup> On April 27, 2018, we invested \$1.8 million in present4D GmbH (“present4D”), a software solutions provider for professional virtual reality presentations and training environments, in the form of an equity capital contribution. During the second quarter of 2019, we determined it is more likely than not that we will not recover our cost basis in present4D and recorded an impairment charge of \$1.5 million, which is included in Other expense, net.

<sup>(6)</sup> Driven primarily by return-to-provision adjustments identified in the preparation of our 2018 U.S. tax return and changes in our reserve for uncertain tax positions due to a change in our judgment on the recognition of a tax position.



**FARO TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**RECONCILIATION OF NET (LOSS) INCOME TO EBITDA AND ADJUSTED EBITDA**  
**(UNAUDITED)**

(in thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2020	2019	2020	2019
Net loss	\$ (3,024)	\$ (6,199)	\$ (26,779)	\$ (12,452)
Interest expense (income), net	161	(24)	407	72
Income tax benefit	(1,739)	(182)	(7,336)	(444)
Depreciation and amortization	3,352	4,798	10,631	14,120
EBITDA	(1,250)	(1,607)	(23,077)	1,296
(Gain) Loss on foreign currency transactions	(256)	514	334	863
Stock-based compensation	2,084	3,387	6,429	8,703
GSA sales adjustment <sup>(1)</sup>	—	—	608	5,840
Advisory fees for GSA Matter <sup>(2)</sup>	—	—	—	1,244
Executive severance costs	—	1,217	—	1,217
Executive sign-on bonuses & relocation costs	—	270	—	845
Present4D impairment <sup>(3)</sup>	—	—	—	1,535
Restructuring costs <sup>(4)</sup>	239	—	14,563	—
Adjusted EBITDA	\$ 817	\$ 3,781	\$ (1,143)	\$ 21,543
Adjusted EBITDA margin <sup>(5)</sup>	1.2 %	4.2 %	(0.5)%	7.6 %

<sup>(1)</sup> Late in the fourth quarter of 2018, during an internal review we preliminarily determined that certain of our pricing practices may have resulted in the U.S. Government being overcharged under our General Services Administration (“GSA”) Federal Supply Schedule contracts (the “Contracts”) (the “GSA Matter”). In fourth quarter 2018, we reduced our total sales by an estimated cumulative adjustment of \$4.8 million. We also retained outside legal counsel and forensic accountants to conduct a comprehensive review of our pricing and other practices under the Contracts (the “Review”). During the nine months ended September 30, 2020 and September 30, 2019, we reduced our total sales by \$0.6 million and \$5.8 million, respectively, (the “GSA sales adjustment”) and recorded imputed interest expense of \$0.6 million and \$0.6 million, respectively, related to the GSA Matter.

<sup>(2)</sup> In connection with the GSA Matter, we retained outside legal counsel and forensic accountants to conduct the Review, which resulted in \$1.2 million in advisory fees incurred during the nine months ended September 30, 2019.

<sup>(3)</sup> On April 27, 2018, we invested \$1.8 million in present4D GmbH (“present4D”), a software solutions provider for professional virtual reality presentations and training environments, in the form of an equity capital contribution. During the second quarter of 2019, we determined it is more likely than not that we will not recover our cost basis in present4D and recorded an impairment charge of \$1.5 million, which is included in Other expense, net.

<sup>(4)</sup> On February 14, 2020, our Board of Directors approved a global restructuring plan (the “Restructuring Plan”), which is intended to support our strategic plan in an effort to improve operating performance and ensure that we are appropriately structured and resourced to deliver increased and sustainable value to our shareholders and customers. In connection with the Restructuring Plan, we recorded a pre-tax charge of approximately \$14.6 million during the first nine months of 2020 primarily consisting of severance and related benefits.

<sup>(5)</sup> Calculated as Adjusted EBITDA as a percentage of Non-GAAP total sales, which adjusts for the GSA sales adjustment.