

FORERUNNER

Master Services Agreement & Statement of Work

City of Key West, FL

Table of Contents

Master Services Agreement

1. Definitions.
2. Forerunner Software Services.
3. Customer Responsibilities; Restrictions; and Suspension.
4. Fees; Payment Terms; Taxes; Customer Acknowledgement.
5. Term; Automatic Renewal; Termination.
6. Intellectual Property and Ownership
7. Publicity and Marketing.
8. Confidential Information.
9. Representations and Warranties.
10. Disclaimer of Warranties.
11. Limitation of Liability.
12. Dispute Resolution.
13. Notices.
14. Miscellaneous.

Statement of Work

1. Services.
2. Customization.
3. Support.
4. Onboarding.
5. Software.

Master Services Agreement

This Master Services Agreement ("**Agreement**"), effective as of 10/01/2023 ("**MSA Effective Date**"), is entered into between Forerunner Industries, Inc., a Delaware corporation ("**Forerunner**"), and City of Key West, a State of Florida] [Municipality ("**Customer**").

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Defined terms have the meanings set forth in this Paragraph 1. Definitions and elsewhere in this Agreement and any Statement of Work attached to this Agreement and incorporated herein when capitalized. These terms may be read in singular, plural, or an alternative tense as the context requires.
 - a. **Affiliate** means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
 - b. **Applicable Law** means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
 - c. **Authorized User** means an Affiliate, employee or independent contractor of Customer (solely to the extent such contractor is providing services to Customer), who has been authorized by Customer to use the Services.
 - d. **Confidential Data Sets** means any sets of data or content originally created or developed by Forerunner or the Software, which may include, but is not limited to, sets of data in which Extracted Data is an input, combined or aggregated with, or augmented by other data or content that is not Extracted Data.
 - e. **Confidential Information** means, without limitation, business, technical, and/or financial information relating to the Disclosing Party, regardless of the form and whether or not marked or otherwise identified as "Confidential." With respect to Forerunner, Confidential Information also means the Services, Confidential Data Sets, and any and all source code relating thereto, as well as documentation and non-public information or material regarding Forerunner's legal or business affairs, financing, customers, properties or data. With respect to the Customer, Confidential Information means any non-public information or material regarding Customer's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which:
 - (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "Receiving Party");
 - (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "Disclosing Party");
 - (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and it so documents; or
 - (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.
 - f. **Customer Data** shall mean the Customer Materials and Extracted Data, collectively.
 - g. **Customer Materials** means all materials and other content provided by Customer to Forerunner to enable the provision of the Services.
 - h. **Extracted Data** means all information, data, and other content that is extracted or collected by Forerunner solely from the Customer Materials or otherwise from the Customer through the Services and is not combined or aggregated with or augmented by data or content that is not Extracted Data.
 - i. **Forerunner Intellectual Property** means:
 1. The Software used by Forerunner to provide the Services, including all Updates, revisions, derivatives, improvements and modifications thereto.

2. The hardware, software, databases, networks, cloud or other hosted solutions, or other information technology infrastructure used by or on behalf of Forerunner in performing the Services (the “**Forerunner Information Technology Infrastructure**”).
 3. Any other technology, data (whether encrypted or unencrypted), reports, documents, manuals, instructions or other materials or deliverables that Forerunner creates, derives from, provides or uses in connection with the Services, and, any other information or materials that otherwise comprise or relate to the Services, including but not limited to any Confidential Data Sets.
 4. Any models, analyses, analytics, algorithms, and machine learning applications created or developed by Forerunner that incorporate, in whole or in part, the Confidential Data Sets and/or Extracted Data.
 5. Any other technology, data (whether encrypted or unencrypted), reports, documents, manuals, instructions or other materials or deliverables that Forerunner provides in connection with the Services designates as confidential, proprietary or trade secret information and/or as exempt from public disclosure.
- j. **Forerunner Representatives** mean Forerunner’s employees, officers, directors, agents, independent contractors, service providers, subcontractors.
 - k. **Integration Agreement** means the agreement, if applicable, governing any integrations with Third Party Applications.
 - l. **Intellectual Property Rights** means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
 - m. **Services** means the services provided or required to be provided according to this Agreement, as well as any Statements of Work attached to this Agreement and incorporated by reference.
 - n. **Software** means Forerunner’s computer software and all Updates made available by Forerunner to Customer under this Agreement, including Confidential Data Sets.
 - o. **Statement of Work (SOW)** means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.
 - p. **Term** means the Initial Term and any Renewal Terms.
 - q. **Third Party Provider** means third parties, including other Vendors, state agencies and local agencies that control products and/or databases with which Forerunner Services are to be interfaced and whose engagement has been pre-approved by Forerunner. Before engaging with a Third Party Provider, Customer agrees to obtain prior approval by Forerunner.
 - r. **Updates** means any and all new releases, new versions, patches and other updates for the Services that Forerunner makes generally available without additional charge to other customers of its Services.
 - s. **Vendors** means third parties with whom Forerunner contracts to provide components of the Services and includes without limitation, Amazon Web Services (for platform hosting) and Google (for Google Maps).

2. **Forerunner Software Services.**

- a. Subject to this Agreement, Forerunner will use commercially reasonable efforts to provide the Forerunner Services described in the Statement of Work attached to this Agreement and incorporated herein by reference, and in any additional SOWs that may be entered into by the parties from time to time and which incorporate this Agreement by reference (collectively, the “Services”).
- b. Forerunner may make changes or updates to the Services that it deems necessary or useful to: (a) maintain or enhance the quality, delivery, cost efficiency or performance of the Services; and/or (b) comply with any Applicable Law, statute, regulation or other governmental rule or requirement (“Law”).
- c. Forerunner may also make other changes and updates as it deems necessary, provided that such changes do not materially derogate the overall quality of the Services. Forerunner does not guarantee

that the Services are or will remain compatible with any particular third party software or equipment, and may, upon written notice, terminate its support for any software or equipment that Forerunner determines is incompatible with the operation of the Services.

- d. Other than with respect to reasonable costs incurred to provide updated versions of Forerunner Services, all Updates or updated versions provided by Forerunner during the Term of this Agreement are deemed part of the Services and are subject to all applicable terms and conditions in this Agreement. Customer agrees to pay for reasonable costs, if any, incurred to achieve compliance with laws, statutes, regulations, and/or other governmental rules.
- e. The parties acknowledge and agree that Forerunner may engage Vendors to perform Services. Vendors will be subject to provisions detailed in this Master Services Agreement and any Statement of Work attached and incorporated by reference.

3. Customer Responsibilities; Restrictions; and Suspension.

- a. **Responsibilities.** Customer will be responsible for and is required to obtain and maintain an information technology infrastructure necessary to connect to, access, or otherwise use the Services, including, without limitation, hardware, software, operating systems, networks, databases, and web servers and/or any other information technology infrastructures necessary to connect to, access, or otherwise use the Services. However, notwithstanding any provision herein, nothing in this Agreement and any Statement of Work attached shall require Customer to fail to comply with all applicable records retention requirements and public records laws.
- b. **In addition, Customer shall:**
 - i. Have sole responsibility for the accuracy; legality; and rights to use, obtain, and share with Forerunner all Customer Materials and any data or information contained therein.
 - ii. Ensure that its Authorized Users shall securely manage their respective password(s) for access to the Service and any user IDs, passwords, and other access credentials for the Services are kept strictly confidential and not shared with any unauthorized person.
 - iii. Promptly notify Forerunner of any breach of security or unauthorized use of its account.
 - iv. Comply with all applicable local, state, federal and foreign laws in using the Services.
- c. **Restrictions.**
 - i. As a condition to receiving the Services, and in addition to any other obligations set forth in a properly executed SOW, Customer may only use the Services in furtherance of its internal government operations, and not for the use by, or benefit of, any third party.
 - ii. Customer shall use the Services solely for itself and its Affiliates' government purposes as contemplated by this Agreement for itself and its Affiliates.
 - iii. Customer shall not license, sell, resell, lease, transfer, distribute, or otherwise commercially exploit or make the Services or Forerunner Intellectual Property available to any third party.
 - iv. Customer shall not modify, translate or create derivative works based on the Services or Forerunner Intellectual Property.
 - v. Customer shall not alter or remove any proprietary rights, notices or marks in the Services or Forerunner Intellectual Property, or use the Services or Forerunner Intellectual Property in any way or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other right of Forerunner and/or any third party.
 - vi. Customer shall not send via the Services, or store within the Services, any unlawful, offensive or tortious material, including, without limitation, hate speech or discriminatory content.
 - vii. Customer shall not imitate or impersonate another person, or his, her or its email or other address or contact information.
 - viii. Customer shall not create false accounts for the purposes of sending unsolicited messages (spam).
 - ix. Customer shall not send messages to individuals who have asked not to receive future messages from Customer (opted out).
 - x. Customer shall not send, upload to, or store within the Services any viruses, worms, time bombs, Trojan horses and/or any other harmful or malicious codes, files, scripts, agents or programs.

- xi. Customer shall not interfere with, or disrupt, the integrity or performance of the Services or the data contained therein.
 - xii. Customer shall not attempt to gain unauthorized access to the Services or its related systems or networks.
 - xiii. Customer shall not use the Services in any fraudulent, harmful or misleading way or in any other way that violates any Applicable Law.
- d. **Suspension.** Any use of the Services by Customer or its Authorized Users that, in Forerunner's reasonable judgment, imminently threatens the security, stability, integrity or availability of the Services, or otherwise harms other customers or third parties, may result in immediate suspension of the Services. Forerunner, however, will use commercially reasonable efforts under the circumstances to notify Customer in advance of such suspension and provide Customer with an opportunity to correct its usage prior to any such suspension. Forerunner will have no liability for any such suspension made in good faith. Additionally, unless this Agreement has been terminated, Forerunner will cooperate with Customer to restore access to the Services once it verifies that Customer has resolved the condition requiring suspension.
4. **Fees; Payment Terms; Taxes; Customer Acknowledgement.** Customer will pay Forerunner the fees described in any SOW attached to this Agreement for the applicable Services in accordance with the terms therein (the "**Fees**").
- a. **Fees.** Except as otherwise may be specified herein or in any SOW attached to this Agreement:
 - i. Fees are based on the Services purchased.
 - ii. Payment obligations are non-cancelable.
 - iii. Fees paid for services rendered are non-refundable.
 - iv. Upon the expiration of the Term, the Annual Fee for any subsequent renewal Term shall be subject to Forerunner's sole discretion and based on, among other factors, software enhancements that Forerunner has made or anticipates making to the Services, security and other updates to the Services, but at least a 10% increase over the prior Term's Annual Fee.
 - b. **Payment Terms.**
 - i. All amounts due for this Agreement and any SOW's attached to this Agreement shall be paid within thirty (30) days after invoice is received by Customer.
 - ii. Forerunner reserves the right to charge, and Customer agrees to pay, a late charge equal to one and one half percent (1.5%) per month on any amount that is unpaid on such amount's due date, and on any other outstanding balance.
 - iii. Customer will pay all amounts due under this Agreement without setoff, deduction, recoupment or withholding of any kind, for amounts owed or payable by Forerunner whether under this Agreement, Applicable Law or otherwise and whether relating to Forerunner's breach, bankruptcy or otherwise.
 - c. **Taxes.** Customer will be responsible for all taxes associated with Services.
 - d. **Customer Acknowledgement.** Customer acknowledges and agrees that although the Services may include legal-related information, no recommendations are being made by Forerunner regarding Customer's legal or other decisions related to any agreements, forms or related advice. Customer acknowledges that no Services provided by Forerunner constitutes investment, accounting, tax, or legal advice. Planning decisions made by Customer using Forerunner deliverables are done at the sole discretion and risk of the Customer and Forerunner is not responsible for the outcomes of any decisions.
5. **Term; Automatic Renewal; Termination.**
- a. **Term.** This Agreement is effective as of the MSA Effective Date and will continue thereafter for the Term specified in any SOW attached to this Agreement (the "**Initial Term**"), unless earlier terminated.
 - b. **Renewal.** This Agreement may be renewed for additional periods, subject to written agreement of both parties.
 - c. **Termination.**
 - i. Forerunner may terminate this Agreement in the event of a breach by Customer of any term or

condition of this Agreement upon ten (10) days prior written notice (written notice includes an e-mail to the e-mail address provided by the Customer).

- ii. In addition, Forerunner may terminate this Agreement immediately if the Customer becomes insolvent, files for bankruptcy or is adjudged to bankruptcy proceedings.
- iii. Forerunner may also terminate this Agreement under other reasonable circumstances with thirty (30) days prior written notice, provided that Forerunner shall refund any pre-paid fees for the Term (pro-rated based on the number of days that have elapsed from the MSA Effective Date through the effective date of termination).
- iv. Customer may terminate this Agreement for convenience or cause with thirty (30) days prior written notice.
- v. **Effect of Expiration of Term; Termination; Survival.** Upon expiration of Term or earlier termination:
 - 1. The Services will terminate and each party will cease use of the other party's Confidential Information.
 - 2. Customer will pay Forerunner any remaining balance of the fees in full for the Services up to and including the last day on which the Services are provided.
 - 3. Forerunner may, but is not obligated to, delete stored Customer Materials.
 - 4. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, perpetual licenses granted by Customer, confidentiality obligations, warranty disclaimers, and limitations of liability.

6. Intellectual Property and Ownership.

a. Forerunner Intellectual Property.

- i. All right, title and interest in, and to, the Services and the Forerunner Intellectual Property are and will remain with Forerunner and its licensors, if any, subject only to the Limited License granted to Customer in the next paragraph "**Limited License.**"
- ii. **Limited License.** Forerunner grants Customer a revocable, non-exclusive, non-transferable, non-sub-licensable license to use the Services and Forerunner Intellectual Property during the Term solely in furtherance of Customer's internal government operations and not for the use by, or benefit of, any third party.

b. Customer Data.

- i. Other than as provided in this Agreement, Forerunner acknowledges and agrees that Customer will own all rights to, title in, and interest in Customer Data, and Forerunner will provide copies of Customer Data to Customer upon Customer's request. Customer grants Forerunner a perpetual, irrevocable, worldwide, royalty-free right and license to use Customer Data for business or commercial purposes including, but without limit to, performing the Services and exercising its rights hereunder, improving and enhancing the Services or other Forerunner services or offerings, and preparing reports and other interpretation of trends for analysis, analytics, marketing purposes; developing algorithms, creating or developing Confidential Data Sets, data applications or analytical programs; and for machine learning applications, whether or not in connection with the Services.

7. Publicity and Marketing. The parties agree that:

- a. Forerunner may include Customer's name and logo in its customer lists and on its website.
- b. Forerunner may issue communications, such as press releases, case studies, and testimonials that reference the relationship between Customer and Forerunner and the manner in which Customer is using the Forerunner solution.
- c. Customer will use reasonable efforts to act as a reference for Forerunner.
- d. Upon request by Customer, Forerunner shall coordinate its efforts with appropriate communications personnel in Customer's organization to secure approval of any such published materials.

8. Confidential Information.

- a. Each party as the “**Recipient**” understands that the other party as the “**Disclosing Party**” has disclosed or may disclose nonpublic, confidential or proprietary information relating to the Disclosing Party’s business. In addition to all descriptions of Confidential Information in this Agreement, Confidential Information does not include information that:
 - i. Was rightfully known to the Recipient prior to such information being disclosed or made available to it in connection with this Agreement.
 - ii. Was or becomes generally known by the public other than by the Recipient’s or Representative’s noncompliance with this Agreement.
 - iii. Was or is received by the Recipient on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality.
- b. As a condition to being provided with access to Confidential Information, Recipient agrees that it will:
 - i. Not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement.
 - ii. Not disclose or permit access to Confidential Information other than to its Authorized Users, who need to know such Confidential Information for purposes of the Recipient’s exercise of its rights or performance of its obligations under this Agreement and are bound by confidentiality obligations no less restrictive than those set forth herein, or to a third party if the Recipient is compelled by Applicable Law pursuant to a lawful court order or judicial subpoena (but in no event will the Recipient voluntarily provide any Confidential Information to any third party, whether governmental or otherwise).
 - iii. Safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care.

9. Representations and Warranties.

- a. **Customer.**
 - i. Customer represents and warrants that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Materials so that, as received by Forerunner and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any Applicable Law.
 - ii. Customer further represents and warrants that it will ensure that all Authorized Users will:
 1. Safeguard the Services and only use the Services in accordance with the terms and conditions set forth herein and not in any manner prohibited by this Agreement.
 2. Not use the Services or any Forerunner Intellectual Property in a manner or for any purpose that infringes, misappropriates or otherwise violates any law or Intellectual Property Right of Forerunner or other third party.
 3. Use the Services in compliance with all Applicable Laws.
- b. **Forerunner.** Forerunner represents and warrants to Customer that it will:
 - i. Perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.
 - ii. Devote reasonably adequate resources to maintain the Services in a manner that minimizes errors and interruptions.
 - iii. Employ commercially reasonable security measures in accordance with applicable industry practice in connection with its collection, storage and processing of Customer Materials.
 - iv. Notwithstanding the foregoing, Forerunner will not incur any obligation or liability if the Services are unavailable:
 1. For scheduled maintenance.
 2. As a result of any satellite, broadband or network connectivity issues, interruptions or failures.
 3. As a result of any other circumstances beyond Forerunner’s reasonable control, including,

without limitation:

- a. Customer's negligence or failure to use the Services properly or in accordance with the terms and conditions of this Agreement;
- b. Customer's use of the Services in a modified form, or Customer's use of the Services in connection or combination with any third party software or hardware;
- c. When Forerunner suspends the Services where it determines in its sole discretion that any data collection, processing, or transferring would be restricted or prohibited by Applicable Law
- d. When Forerunner suspends or terminates Customer's access to the Services due to its good faith belief that Customer is involved in any type of fraudulent, misleading or unlawful activity relating to or in connection with any of the Services, or has otherwise failed to comply with the terms and conditions of this Agreement; and/or
- e. Where Forerunner receives a judicial or other governmental order, subpoena or similar request that expressly or by reasonable implication requires Forerunner to suspend or terminate the Services.

10. Disclaimer of Warranties.

- a. Forerunner does not warrant that the Services will be uninterrupted or error free or be compatible with any other goods, services, or technologies.
- b. Forerunner does not make any warranty as to the data, reports, or results that may be obtained from use of the services, including the completeness or accuracy of such data, reports or results, including geocoding or data extraction, except as expressly set forth in this section.
- c. The Services are provided "AS IS" and Forerunner disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

11. Limitation of Liability.

- a. **Limitation of Liability.** In no event will Forerunner be liable to Customer or to any third party under, or in, connection with this agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability and/or otherwise, for:
 - i. Any loss of revenue or profit.
 - ii. Cost of replacement goods or services.
 - iii. Loss of goodwill or reputation.
 - iv. Loss, damage, or corruption of any Customer Materials or reports provided as part of the Services.
 - v. Losses caused by, or resulting from, any action, conclusion, decision or omission based on any data or reports provided as part of the Services.
 - vi. Damage or losses caused by any third party materials used in connection with the services.
 - vii. For any consequential, incidental, indirect, exemplary, special, enhanced or punitive damages, regardless of whether such party was advised of the possibility of such losses or damages were otherwise foreseeable.
- b. **Limitation of Aggregate Liability.** In no event will the aggregate liability of Forerunner in connection with this Agreement under any legal or equitable theory exceed the fees paid or payable by Customer to Forerunner in the twelve months preceding the action.

- 12. **Dispute Resolution.** In the event of a dispute arising under or relating to this Agreement, the parties agree to finally and exclusively resolve the dispute by binding arbitration governed by the Federal Arbitration Act ("FAA"). All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect, which is available at the AAA website www.adr.org. If

those rules conflict with this provision, this provision shall control. The arbitration shall be conducted before a panel of one or more arbitrators. The arbitrator(s) shall be selected from the AAA's National Roster of Arbitrators pursuant to agreement between the parties or through selection procedures administered by the AAA. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in New York, New York. The arbitrator(s) shall determine the matters in dispute strictly in accordance with the terms of this Agreement and the substantive law of the State of New York, excluding its principles of conflicts of laws, except that the interpretation and enforcement of this arbitration provision shall be governed by the FAA. The parties agree that ~~New York, New York, USA~~ is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision herein is found to be unenforceable. MONROE COUNTY, FL (P)

- a. **Arbitral Award.** The award of the arbitrator(s) shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators, provided that the Arbitrator(s) shall have no authority to award either party any special, punitive, indirect, incidental, or consequential damages (including damages for lost profits), or attorneys' fees or costs.
- b. **Court Litigation.** The parties may litigate in court and shall submit to the personal jurisdiction of the federal and state courts located in ~~New York, New York~~ for any action to do the following: (i) to compel arbitration; (ii) to stay proceeding pending arbitration; (iii) seek injunctive or other equitable relief to prevent the actual or threatened infringement, misappropriation or violation of a its copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, including any provisional relief required to prevent irreparable harm; (iv) to protect or defend the ownership, validity or enforcement of any Intellectual Property Rights; (v) or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. MONROE COUNTY, FL or The Southern District of FL (P)
- c. **Confidentiality and Admissibility.** ^{Subject to Florida's Public Records Laws} The arbitration award and record, and any Confidential Information that is used at or in connection with the arbitration shall not be disclosed to third parties by the arbitrator(s) or the parties ~~without the prior written consent of both parties~~. Neither the fact that the arbitration occurred nor the result of the arbitration shall be admissible in evidence in a subsequent proceeding brought on the same claims that were presented at the arbitration. (P)

13. **Notices.** All notices under this Agreement will be provided in writing to the addresses set forth on the signature page and will be deemed to have been duly given when received as follows:

- a. Personally delivered.
- b. When receipt is confirmed by recipient and/or by email delivery notification if transmitted by facsimile or e-mail.
- c. The day after it is sent, if sent for next day delivery by recognized overnight delivery service.
- d. Upon receipt, if sent by certified or registered mail, return receipt requested.

14. **Miscellaneous.**

- a. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other third party any legal or equitable right, benefit or remedy of any nature whatsoever under, or by reason of this Agreement.
- b. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement.
- c. In the event a conflict between this Agreement and a SOW arises, this Agreement will control, unless otherwise expressly provided in the SOW.
- d. The parties agree that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.
- e. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- f. All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or

separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- g. The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- h. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- i. Except as otherwise provided in this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party; provided, that Forerunner may assign any of its rights or delegate any of its duties under this Agreement without any prior written consent of Customer if such assignment or delegation is to a successor by consolidation, merger or operation of law or to a purchaser of all or substantially all of its assets.
- j. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Forerunner in any respect whatsoever.
- k. Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- l. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- m. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- n. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

Forerunner MSA Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Master Services Agreement as of the MSA Effective Date.

Forerunner Industries, Inc.

Signed:

Name: Susanna Pho

Title: Chief Operating Officer

Date:

Address: 548 Market Street #93531,
San Francisco, CA 94104

City of Key West, FL

Signed:

Name:

Title:

Date:

Address:

1300 White St
Key West FL 33540

Reviewed for Legal Sufficiency
Subject to
Changes on P. T.
RR 6/29/23

Ronald J. Ramsingh, City Attorney

Statement of Work No. 1

This Statement of Work No. [1] ("**SOW**"), effective as of 10/01/2023 (the "**SOW Effective Date**"), is entered into between Forerunner Industries, Inc., a Delaware corporation ("**Forerunner**"), and City of Key West, a State of Florida Municipality ("**Customer**"). This SOW adopts and incorporates by reference the terms and conditions of the Master Services Agreement ("**MSA**"), entered into by Forerunner and Customer on 10/01/2023. Capitalized terms used but not defined in this SOW shall have the meanings set out in the MSA.

Customer Information

Customer Name: City of Key West, FL
Customer Address: 1300 White Street Key West, FL 33040
Customer Contact Name: Raj Ramsingh
Contact Email: raj.ramsingh@cityofkeywest-fl.gov
Contact Phone: 305 809-3943

Initial Term

One (1) Year

Fees

Item	Type	Cost
Forerunner Interim License (8/1/23 – 10/1/23) <i>Provided if signed by June 30th 2023</i>	One-Time	Free
Forerunner Annual License	Yearly	\$35,000
Customization	Yearly	\$7,500 Repetitive Loss
Forerunner Mobile Application¹ <i>First-year fee (January-September 2024) waived if signed by June 30th, 2023</i>	Yearly	\$10,500
One-time Set-up <i>Waived if signed by June 30th, 2023</i>	One-Time	\$15,000

¹ Application delivery in January 2024.

Payment Terms

Forerunner's may be renewed for additional periods, subject to written agreement of both parties. As described in the Agreement, all amounts due shall be payable within 30 days after invoice is received by Customer. Should this Agreement be duly executed prior to June 30th, 2023, Forerunner shall provide its new Mobile Application without any supplementary charges. However, as of September 2024, Forerunner retains the exclusive

right to modify the pricing of the Mobile App, transitioning from its initial cost-free provision in the first year to the standard pricing structure upon contract renewal.

Description of Forerunner Software and Services

1. **Software and Services.** Forerunner will provide the following software and services to the Customer:
 - a. **Data Extraction.** Forerunner will extract select fields ("Extracted Data") from Customer's archived and incoming Elevation Certificates, subject to the terms and conditions of the Master Services Agreement. List of extracted fields provided to Customer by request
 - i. **Data augmentation.** When available, data extraction will include:
 - b. Automated address geocoding, subject to the terms and conditions of the Master Services Agreement.
 - c. Automated parcel assignment, subject to the terms and conditions of the Master Services Agreement.
 - d. FIRM data assignment.
 - e. Datum conversion.
 - b. **Software.** As part of its ongoing Software offering, Forerunner will provide the following:
 - i. Accounts for up to ten (10) users. Additional seats available for added fee.
 - ii. Forerunner internal dashboard
 - a. Elevation Certificate management.
 - i. Internal Elevation Certificate upload.
 - ii. Elevation Certificate table with filtering.
 - iii. Elevation Certificate download.
 - b. Internal document management.
 - i. Internal per-property document upload and storage.
 - c. Activity tracking.
 - i. Activity tracking for internal actions taken in dashboard.
 - ii. Per-property comment tracking.
 - d. Substantial Improvement and Damage tracking
 - e. Mapping.
 - i. FIRM map overlay(s) where available.
 - ii. Address search.
 - iii. Per-property building attribute data, where available.
 - f. Automated Elevation Certificate error detection for:
 - i. Residential structures only.
 - ii. Documents with form dates more recent than 2015.
 - iii. Documents with issue dates more recent than Effective FIRM date for location.
 - g. Per-property communication log.
 - i. Log export.
 - h. Dashboard permissions.
 - i. Segmented access to dashboard functionality by role type.
 - ii. Ability to add new users and set roles.
 - iii. Public Website.
 - a. Elevation Certificate public search including:
 - i. Elevation Certificate table filtering by address, parcel ID, Block, Lot, and more.
 - ii. PDF document view.
 - b. Public property profiles displaying flood risk information.

- i. Share public profile functionality and communication log tracking on internal dashboard.
 - c. Property search by address.
 - iv. Repetitive Loss Data Module
 - a. Yearly import of Customer's repetitive loss data, as provided by Customer.
 - b. Advanced user role/permissions and access logging.
 - c. Forerunner has implemented commercially reasonable measures designed to protect Repetitive Loss Data. Upon import, Repetitive Loss Data is scrambled in staging and local development environments. Forerunner also provides features that allow Customer to limit access to Repetitive Loss Data to authorized personnel.
 - v. Mobile Application (if applicable, per Fees and Payment Terms above)
 - a. Forerunner access in offline mode.
 - b. Mobile Inspections feature with data and image collection.
2. **Onboarding.** As part of initial Customer onboarding and implementation, Forerunner will provide Customer with successful transfer of all existing and relevant Customer Materials to Forerunner's database, user login/password provisioning, and onboarding training. Additionally, Forerunner will import and extract Customer's existing Elevation Certificate archive, as made available by Customer, during initial onboarding period. Customer will be responsible for uploading Elevation Certificates to Forerunner after initial onboarding period.
3. **Support.** Forerunner provides a dedicated account manager to the Customer starting at the time of initial onboarding to assist in coordination, troubleshooting, and error identification. Additional trainings are available upon request.
4. **License.** During the Term, Forerunner hereby grants a non-exclusive, non-transferable, non-sub-licensable license to Customer to access and use the Services through the Forerunner Website for Customer's internal purposes and in accordance with the terms and conditions of the Master Services Agreement, to which this Statement of Work is attached and incorporated by reference. Forerunner will be responsible for hosting the Software, and Customer and its Authorized Users will be responsible for obtaining internet connections and other third party software and services necessary for it to access the Software through the Internet. Customer and any of its Authorized Users will be responsible to Forerunner for compliance with the restrictions on use and other terms and conditions of the Master Services Agreement, to which this Statement of Work is attached and incorporated by reference.
5. **Customization and Consulting.**
- a. Customer will notify Forerunner of changes in FIRM data that warrant updates from FEMA's Map Service Center.
 - b. Data incorporated into dashboard is obtained from Vendors at Forerunner's discretion. Incorporating additional data sources into the Services may be possible for an additional fee, to be negotiated as needed.
 - c. Customization, including the integration of additional map layers and unique exports, and data analysis consulting services are available for an additional fee. Any work or services not outlined in the Master Services Agreement or this Statement of Work will be incorporated in a separate SOW.
 - d. To the extent Services involve the development of any customization or configuration of software, all Intellectual Property Rights to such customization or configuration will be solely owned by Forerunner and will be deemed to be included in the definition of Services and licensed to Customer on the terms set forth in the Master Services Agreement, to which this Statement of Work is attached and incorporated by reference.

6. **Termination.** Extracted Data will be made available to Customer for 90 days following the termination of this Statement of Work.

[Signature Page Follows]

Forerunner SOW Signature Page

The parties hereto have executed this STATEMENT OF WORK as of the SOW Effective Date.

Forerunner Industries, Inc.

Signed:

Name: Susanna Pho

Title: Chief Operating Officer

Date:

Address: 548 Market Street #93531,
San Francisco, CA 94104

City of Key West, FL

Signed:

Name:

Title:

Date:

Address:

1300 White St
Key West, FL
33040