

## Forsta Flex Developer Agreement

This Forsta Flex Developer Agreement (“**Agreement**”) governs the use of the SDK described in applicable Sales Order, Order Document, or other commercial agreement (“**Sales Order**”) between the Forsta entity (“**Forsta**”) and developer or client, however named, (“**Developer**”) (individually, a “**Party**”, collectively, the “**Parties**”) referenced in the applicable Sales Order that references this Agreement.

Developer acknowledges that its rights to use and receive support for the SDK licensed herein, and to access the Flex Extension Framework on the Flex test Environment, is subject to Developer’s acceptance of the terms and conditions herein, and that such right to use and receive support will automatically cease on termination or expiration of this Agreement.

**WHEREAS:** Forsta develops, supports, and provides licenses to use a variety of software applications, primarily but not exclusively designed for questionnaire design, panel management, data collection, data processing, data analysis and data reporting, and offers certain other services and products related thereto; and

**WHEREAS:** Developer would like to use the SDK (as defined below) to develop one or more Applications (as defined below) for interoperation with the Flex Extension Framework and Software. Forsta is willing to grant Developer a limited license to use the SDK to develop and test the Applications to interoperate with the Flex Extension Framework on the terms and conditions set forth in this Agreement

The Parties agree as follows:

### Definitions

As used in this Agreement, these terms shall have the following meaning:

“**Affiliate**” means, with respect to Forsta, any second entity Controlling, Controlled by or under common Control with that first entity. As used in this definition, “Control” and its derivatives means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, person or other entity whether through the ownership of voting securities, or by contract or otherwise.

“**Agreement**” means this Flex Developer Agreement, including any Schedules hereto, which are hereby incorporated by this reference.

“**Application**” means a software program which Developer produces and maintains in compliance with this Agreement and the Documentation, under Developer’s own trademark or brand and for specific use in interoperation with the Software, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs. Each application may be “**Internal Applications**”; or “**Bespoke Applications**” or “**Public Applications**”, as defined herein.

“**Application Fees**” means the recurring fees Developer shall pay to Forsta in accordance with a Fit For Purpose form.

“**Approved Application**” means an Application that has been approved by Forsta in accordance with the Fit for Purpose process and/or the Fit for Deployment process, as applicable.

“**Article**”: means a portion of this document identified by a number at the 1st level (e.g. “1”, “2”, “23” etc). An Article will also comprise all subordinate levels of text within the bounds of that Article.

“**AUP**”: mean the Acceptable Use Policy, which sets forth usage guidelines which Developer shall abide by, and available at <https://legal.forsta.com/>

“**Authorized Developers**” means up to five (5) programmers, who shall be employees of Developer, and who have a demonstrable need to know or use the SDK in order to develop and test Applications, and who will each have written and binding agreements with Developer to protect the unauthorized use and disclosure of Forsta’s Confidential Information.

“**Bespoke Applications**” means an Approved Application built by Developer on behalf of a Forsta Client, and to be used by that Forsta Client.

“**Forsta Client**”: A party having a valid license with Forsta for the use of the Software.

“**Forsta Extranet**”: A site owned and managed by Forsta where Forsta will make available to Authorized Developers resources defined in this Agreement, including Documentation.

“**Forsta Flex Marketplace**”: A site owned and managed by Forsta where Forsta may at its sole discretion present to the broader market Public Applications developed by Developer, by other developers, and by

**Forsta.**

**“Confidential Information”**: Defined in Article 15.

**“Developer”**: means the company which enters into this Agreement with Forsta.

**“Documentation”** means any technical or other specifications or documentation that Forsta may provide to Developer for use in connection with the Flex Extension Framework and published on the Forsta Extranet, either in searchable databases or otherwise. The Documentation may also include requirements relating to the Equipment, and requirements (if any) for programming languages supported.

**“Documented API”**: An application programming interface which is documented on Forsta's extranet or in the Documentation for the purpose of enabling developers to link their applications with the Software.

**“Effective Date”** means the First Date as set forth in the applicable Sales Order.

**“Equipment”**: means the hardware platform and software infrastructure, for which Developer bears the full costs and responsibility, and on which the Developer (i) installs the SDK; and (ii) creates, installs and tests Applications; and (iii) where applicable under this Agreement, offers access to the Applications to Forsta Clients.

**“EULA”** means an End User License Agreement that Developer shall sign with Forsta Clients, and which shall include the minimum terms set forth in Schedule 1.

**“Extension Point”** means certain application programming Interfaces that need to be activated within the Software for a given Application to be able to interoperate with the Software via the Flex Extension Framework.

**“Fit For Deployment”**: means the process set forth in Article 7.

**“Fit For Purpose”**: means the process set forth in Article 6.

**“Flex Extension Framework”** means the application programming Interfaces that enable Developer to set Applications up to interoperate with the Software, with or without use of the SDK. The Flex Extension Framework is part of the Software and is not, under this Agreement, provided to Developer for installation or otherwise.

**“Flex Key”**: means a unique authentication code necessary for the proper interoperation of any Application with the Software.

**“Flex Test Environment”**: means the test server environment managed by Forsta and where the Software, including the Flex Extension Framework, is hosted, and to which Developer shall be granted access for the Form Term for the sole purpose of developing, maintaining and testing the proper functioning of the Applications with the Software.

**“Flex Run-Time license”** means a license, separate from this Agreement, which provides a Forsta Client who is operating its own Forsta On-Premise environment, access to use the Forsta Flex Extension Framework on Client's own Equipment. The Flex Run-Time license is required for any type of Application which is to interoperate with the Software on the Client's on On-Premise environment.

**“Form Term”** means the period set forth on the front page of this Agreement.

**“Internal Application”** means an Approved Application built by a developer that is also a Forsta Client, and to be used by such Forsta Client (the Developer) only.

**“IPR”**: means intellectual property rights including without limit patents, copyrights, design rights (both registered and unregistered), trade marks (both registered and unregistered), service marks, trade secrets, know-how, database rights and actual property rights, right, title and interest in and to all applications for the same anywhere in the world.

**“On-Demand Environment”** means the “Software as a Service” server environment managed and controlled by Forsta and into which Forsta Clients are granted licenses to access to use the Software. For clarity, no access to the Software on the On-Demand environment is granted to Developer under this Agreement.

**“Owners”** means Forsta and parties from which Forsta derives its rights to the Flex Extension Framework and THE SDK.

**“Parties”** means jointly, Developer and Forsta.

**“Public Application”** means an Approved Application built by a developer to be offered for licensing Forsta Clients in general, subject to the terms herein.

**“Rate Limits”** means thresholds used by Forsta to control the rate of traffic between Applications and the Flex Extension Framework. Traffic that is less than or equal to the specified threshold is accepted, whereas traffic that exceeds the threshold may be dropped or delayed at Forsta's sole discretion. Rate Limits may be enforced in the form of an acceptable use policy, or by means of thresholds coded into the Software and automatically managing traffic. Applicable Rate Limits levels at any time shall be available to Developer on the Forsta Extranet, or in the applicable Fit For Purpose or Fit For Deployment forms.

**“SDK”** (Software Development Kit) means the Documentation, sample code, tools, data, files, and materials provided from the Forsta Extranet for use by Developer in connection with development of Applications

which are intended to interoperate with the Flex Extension Framework and includes any updates that may be provided pursuant to this Agreement. The SDK will be provided in programming language(s) at Forsta's discretion.

"**Section**" means a portion of this document identified by a number at the 2nd level (e.g. "1.1", "2.2", "23.6" etc). A Section will also comprise all subordinate levels of text within the bounds of that Section.

"**Software**" means those of Forsta's proprietary software application(s), other than the SDK, including software originally developed or owned by other companies (jointly the Owners as defined above), which the Developer's Applications are being developed to interoperate with, including the Forsta Professional Software.

"**User ID**" means the unique access details issued by Forsta to, and used by, one individually Authorized Developer, for that person to access the Flex Test Environment for purposes relating only to testing the integration of Application(s) with the Software by means of Extension Points.

## 1. LICENSE TO USE

1.1. Subject to the terms and conditions of this Agreement, Forsta shall grant Developer a non-exclusive, non-transferable and time-limited license to install and use the SDK, and access to the Flex Extension Framework on the Flex Test Environment, as set forth in this Agreement. For clarity, no license is being granted to any Software under this Agreement, and access to the Software is subject to executed agreements separate from this Agreement.

1.2. Developer will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by Developer and Authorized Developers in connection with the Flex Extension Framework and the SDK, any Applications and related development and distribution efforts, including any related development efforts, network and server equipment, and Internet service(s).

1.3. The Flex Extension Framework and the SDK may be changed by Forsta at any time without prior notice, provided however that Documentation shall, before or immediately upon the change having been implemented, be updated on the Forsta Extranet (or any other repository of Documentation as determined by Forsta).

1.4. DEVELOPER HEREBY CONFIRMS, UNDERSTANDS AND ACCEPTS THAT CHANGES APPLIED BY FORSTA TO THE FLEX EXTENSION FRAMEWORK AND TO THE SDK AS SET FORTH IN SECTION 1.3 ABOVE, MAY CAUSE APPROVED APPLICATIONS TO CHANGE BEHAVIOUR OR STOP WORKING. DEVELOPER HEREBY EXPLICITLY UNDERTAKES TO PROACTIVELY ENSURE THAT APPLICATIONS ARE PROMPTLY UPDATED AT ANY TIME AT DEVELOPER'S SOLE COST AND RISK.

## 2. DELIVERY AND INSTALLATION OF THE SDK

2.1. Access to the SDK shall be provided to Developer via download from Forsta's Extranet, or as otherwise provided by Forsta.

2.2. Developer shall be the sole responsible for all aspects of the Equipment, including procurement, installation, maintenance and upgrades. Developer is fully responsible throughout the Form Term for the compliance of the Equipment with the applicable Documentation.

2.3. Developer acknowledges that any guidelines or recommendations given by Forsta either through the Documentation or by other channels, with regards to hardware platform and supporting infrastructure to run the SDK and / or the Applications, is to be regarded as guidelines only, and is not subject to any guarantee. Developer furthermore acknowledges that changes in the Flex Extension Framework, the Application, or general user patterns, may trigger need for Developer to scale up or upgrade the Equipment at Developer's sole cost and risk.

## 3. AUTHORIZED USERS OF THE SDK, THE FLEX EXTENSION FRAMEWORK AND THE FLEX TEST ENVIRONMENT

3.1. Developer is responsible for ensuring that the SDK and the Flex Test Environment (on which the Flex Extension Framework resides) shall only be accessed and used by Authorized Developers, and that no other persons, firms or enterprises shall be permitted access to or use of said SDK, Flex Extension Framework and Flex Test Environment. As it pertains to Developer's access to the Software on the Flex Test Environment, each Authorized Developer will receive, upon request, a User ID from Forsta. User IDs shall be uniquely named and refer to a named e-mail address (no generic names and addresses accepted). Developer will ensure that only Authorized Developers to which User IDs have been assigned are permitted to access the Flex Test Environment so to use Software, and that no more than one (1) Authorized Developer shall have access to each User ID so that User IDs are not shared among Authorized Developers.

3.2. Developer retains the right to re-assign User IDs upon request, and obtain from Forsta a new User ID. Passwords shall always be changed when a User ID is being transferred from one Authorized Developers to

another.

#### **4. USE OF THE FLEX EXTENSION FRAMEWORK AND THE SDK**

- 4.1. Developer will be bound by and shall ensure that all Authorized Developers:
- 4.1.1. will only use the Flex Test Environment, the Flex Extension Framework and the SDK (i) for the purposes and in the manner expressly permitted by this Agreement; (ii) in accordance with the Documentation and the AUP; and (iii) and in accordance with all applicable federal, state and local laws rules and regulations, including those related to the development, marketing, sale and distribution of the Application in any applicable country;
  - 4.1.2. will not use the Flex Test Environment, the Flex Extension Framework and SDK for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortuous, unlawful or illegal act;
  - 4.1.3. will not, through use of the Flex Test Environment, the Flex Extension Framework and SDK, create any Application or other program that would disable, hack or otherwise interfere with the Software, or any security, verification or authentication mechanisms implemented in or by the Flex Extension Framework or the SDK or the Software, any services or other Software or technology, or enable others to do so;
  - 4.1.4. shall implement and maintain security measures no less restrictive than those Developer uses to protect its own confidential information, but in no event less than reasonable efforts, to safeguard the Flex Test Environment, the Flex Extension Framework, the SDK and Flex Keys from unauthorized access, use or copying.
- 4.2. Applications shall solely be used in interoperation with the Software, and only via Extension Points. Applications may however interoperate with other software in addition to the Software.
- 4.3. Developer may make additional copies of the SDK but distribution of such copies will be restricted to Authorized Developers and will be subject to the Mutual Confidentiality Terms in Article 15. Developer shall on an ongoing basis promptly and diligently delete any and all copies of the SDK that are in excess of the authorized five (5) Authorized Developers.
- 4.4. Other than that permitted under applicable law or explicitly permitted under this Agreement, Developer shall not decompile, revise, engineer, modify, or derive source code from the SDK or any other software provided as part of this Agreement, nor prepare translations or derivative works based upon, distribute, sublicense, rent, lease, sell or otherwise commercially exploit the SDK.

#### **5. REQUIREMENT STANDARDS FOR APPLICATIONS**

- 5.1. Any Application developed to interoperate with the Flex Extension Framework must meet all of the criteria set forth under this Agreement, including (i) any additional requirement standards (the "Requirement Standards"), and (ii) the Rate Limits; both as set forth on the Forsta Extranet at any time.
- 5.2. Applications shall be developed in compliance with the Documentation.
- 5.3. Applications must comply with all applicable federal, state and local laws rules and regulations including those in any jurisdictions in which Applications may be offered or made available, including any applicable privacy and data collection laws and regulations with respect to any collection, transmission, maintenance, processing, use, etc. of location data or personal information by the Application. Developer must take appropriate steps to protect any such location data or personal information from unauthorized disclosure or access.
- 5.4. Applications may only use Documented APIs and must not use or call any private APIs.
- 5.5. Developer shall at any time ensure that Applications comply with the applicable Rate Limits.
- 5.6. Applications may not perform any functions or link to any content or use any robot, spider, site search or other retrieval application or device to scrape, retrieve or index services provided by Forsta or its licensors, or to collect, disseminate or use information about users for any unauthorized purpose.
- 5.7. Developer shall be solely and fully responsible for ensuring that its Applications work properly towards any applicable versions of the Forsta Software at any time.
- 5.8. As it pertains to any Application, Developer will be solely responsible for (i) any documentation, user manuals and similar; and (ii) for all support to Forsta Client; and (iii) any warranty of Developer's Applications. The fact that Forsta may have reviewed, tested, and approved an Application under this Agreement, will not relieve Developer of any of these responsibilities.
- 5.9. In order for any individual Application to be enabled to interoperate with, and authenticate towards, the Software, a Flex Key needs to be installed on the applicable Equipment. One Flex Key must be installed for each individual Application. Developer undertakes to handle all Flex Keys in a highly secure way so to prevent it from becoming visible to, or available to, any third party. Developer hereby confirms that it is aware that access of the Flex Key by any third party may cause that Flex Key to be abused, and that Developer will assume all responsibilities in relation to that.

5.9.1. For Applications intended to interoperate with the On-Demand Environment, Flex Keys will be provided to Developer by Forsta, upon the request of Developer.

## 6. FIT FOR PURPOSE PROCESS

6.1. Before starting to design or develop an Application aimed at interoperating with the Software via the Flex Extension Framework, Developer shall submit to Forsta a request outlining the proposed functionality of such Application, the intended use and users, and other information that Forsta may require in the Fit For Purpose form. Developer will furthermore be requested to declare the nature of the Application (Internal Applications, Bespoke Application or Public Application, as defined above), and which platform the Application will integrate with (Forsta's On-Demand Environment, or a Forsta Client proprietary hosting environment).

6.2. One Fit For Purpose form shall be submitted by Developer to Forsta for every single Application.

6.3. Forsta will use reasonable efforts to respond to Developer's Fit for Purpose request within ten (10) business days of receipt of the Fit for Purpose form.

6.4. In the event Developers submits a Fit for Purpose form that appears to involve the development of an Application that is capable of being used by Developer or any third party to circumvent Forsta's business model, or which Forsta reasonably deems to fall within any of the categories in Sections 8.1.1 to 8.1.8 below, then Forsta may reject the Application at its sole discretion. Forsta will, upon Developer's request, discuss with Developer ways, if any, to amend the Application to make it acceptable to Forsta. The parties however agree that Forsta shall have the full right to define a Fit for Purpose as having been finally rejected, with no recourse available to Developer.

6.5. For any **Public Applications** and **Bespoke Applications**, Developer shall be bound to enter into a EULA with each Forsta Client including terms and conditions materially similar to those set forth in Schedule 1.

6.6. In the event Developer intends (i) to apply functionality modification to an Approved Application and where such modifications are other than marginal; or (ii) to extend or change the nature of the Application (such term as defined in Section 6.1 above); then Developer shall be bound to resubmit a Fit for Purpose form to Forsta in accordance with this Article 6.

6.7. By submitting a Fit for Purpose form for approval by Forsta, Developer understands and accepts that any service level agreement (SLA) provided by Forsta to On-Demand Forsta Clients under agreement with such Forsta Clients, shall not be applicable to the Application(s).

6.8. An approval by Forsta of any Application shall in no way be deemed as any guarantee of feasibility, quality and/or specifications of the described Application, or any endorsement thereof in any way.

6.9. Approval by Forsta of any Application shall be subject to the terms and conditions of (i) this Agreement; and (ii) a Fit For Purpose form and; where applicable (iii) a Fit for Deployment form. The terms and conditions may include:

6.9.1.1. For **Public Applications** and for certain **Bespoke Applications**:

6.9.2. a recurrent Application Fee payable by Developer to Forsta for every Application licensed by Developer to any Forsta Client;

6.9.3. where the Application is interoperating with the On-Demand Environment, a process shall be established whereby Developer shall request Forsta to activate the necessary Extension Points for each Forsta Client that Developer licenses an Application to;

6.9.4. For **Internal Applications** and **Bespoke Applications**, recurrent fees shall be payable by the Forsta Client for its right to run any Application via the Flex Extension Framework towards the Software.

6.10. Additional to the above fees, a **Flex Run-Time license** will be required for Forsta Clients running the Software on their own On-Premise environment.

6.11. Developer shall, within 30 days of the end of each Quarter, declare to Forsta in writing, by e-mail to [flex@Forsta.com](mailto:flex@Forsta.com) (or as otherwise mutually agreed), the Application Fees due to Forsta under this Agreement and as specified in each individual Fit For Purpose form. The term "Quarter" refers to the periods of January to March, April to June, etc. Forsta will issue an invoice to Developer on the basis of Developer's declaration, and Developer shall pay such invoice within 30 days of the invoice date. Payment terms other than those set forth in this Section 6.11 may be agreed for each specific Application in the applicable Fit For Purpose form.

6.12. Upon Forsta's written request, Developer shall, within ten (10) business days, provide Forsta with (i) the complete list of the Applications that Developer has developed under this Agreement; (ii) a copy of all EULA agreements; (iii) all supporting documentation for Application Fees declared by Developer under Section 6.11. Developer will furthermore provide such additional information and clarifications as Forsta may reasonably request.

## 7. FOR APPLICATIONS TO BE CONNECTED TO THE FORSTA ON-DEMAND



**ENVIRONMENT: FIT FOR DEPLOYMENT PROCESS**

7.1. Development, testing and maintenance of Applications shall take place on Developer's Equipment. Alternatively, upon Developer's request, Developer shall be granted access to the Flex Test Environment in accordance with Section 10.1.2 below for the purposes of Application development, testing and maintenance. For clarity, the actual Application shall however always be hosted on Client Equipment and not on the Flex Test Environment.

7.2. Developer shall never perform development, testing and maintenance on the On-Demand Environment.

7.3. Upon Developer's completion of its development efforts and proper testing of an Application, Developer may request to Forsta, via completion of a Fit For Deployment form, that the necessary Extension Points are activated so to enable interoperation between the Application and the On-Demand Environment.

7.4. At any time during the Form Term, Forsta reserves the right to conduct any type of review of Developer's Applications. Developer agrees to provide Forsta with access to the Application, and to the source code thereof, as well as to cooperate with Forsta by answering questions, filling in a questionnaire, and providing information and materials reasonably requested by Forsta regarding the submitted Application. Forsta's review may include, at Forsta's sole discretion, a security review of the Application, which may include security testing. Security testing may include remote application-level security testing of the Application, and network-level security testing including a vulnerability threat assessment. Forsta may conduct such testing itself or through a third party. Any of Developer's nonpublic information to which Forsta obtains access in the course of such security testing will be considered Confidential Information in accordance with Article 15 below.

7.5. Approval by Forsta of any individual Fit For Deployment form relating to an Application, shall be subject to Forsta's conditions set forth in the Fit For Deployment form, including the requirement for Developer to enter into an EULA with the Forsta Client, and the requirement for the Equipment on which the Application will run to be professionally set up to guarantee a minimum of 99.7% uptime per quarter, including appropriate redundancy measures.

**8. FORSTA'S RIGHTS TO REVOKE APPLICATIONS FROM BECOMING, OR REMAINING, CONNECTED TO THE ON-DEMAND ENVIRONMENT**

8.1. Notwithstanding any previously approved Fit For Purpose form under this Agreement, Forsta retains the rights, at its sole discretion, to take the steps set forth in Section 8.3 below for (i) Applications for which Developer has submitted a Fit for Deployment form; or (ii) Applications that are already connected to the On-Demand Environment; and where:

8.1.1. such Application appears to be in contravention, or is actually in contravention, with any applicable federal, state and local laws rules and regulations, including those governing (i) the collection, processing and dissemination of data; (ii) the sending of email and other electronic or digital communications and messages; (iii) intellectual property rights;

8.1.2. such Application contains content or materials of any kind (text, graphics, images, photographs, sounds, etc.) that in Forsta's reasonable judgment may be found objectionable, for example, materials that may be considered obscene, pornographic, or defamatory;

8.1.3. such Applications is designed or marketed for the purpose of harassing, abusing, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others;

8.1.4. such Application contains, or is reasonably believed to contain, any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect other software, firmware, hardware, data, systems, services, or networks;

8.1.5. Forsta has reason to believe that such Application damages, corrupts, degrades, destroys or otherwise adversely affects the On-Demand Environment;

8.1.6. Forsta is required by law, regulation or other governmental or court order to take such action in relation to such Application;

8.1.7. the Application breaches any reasonable limitation of use established for the applicable Extension Points, including those set forth in the AUP;

8.1.8. Forsta has received complaints from Forsta Clients licensing an Application, and where Developer has not addressed and resolved such complaints promptly upon Forsta informing Developer thereof in writing.

8.2. In the event Developer was not to renew his developer status by execution of a new Agreement by the Last Date as set forth on the front page of this Agreement, or where the Agreement is terminated by either party in accordance with the term herein, Forsta retains the rights to take the steps set forth in Section

8.3 below for Applications that are connected to the On-Demand Environment.

8.3. In all circumstances outlined in Sections 8.1 and 8.2, Forsta may at its sole discretion deactivate the Extension Point for the Application(s) in question, preventing the Application from continuing to function towards the On-Demand Environment. In the event of an impending deactivation of an Extension Point under Section 8.1, Forsta shall make reasonable efforts to contact Developer in advance of such deactivation, provided however that Forsta reserves the right to act without notice when necessary to preserve the stable, secure and uninterrupted operations of the On-Demand Environment, as determined by Forsta in its sole discretion.

8.4. Except for deactivations of Extension Points under Section 8.2, Forsta shall make reasonable efforts to cooperate with Developer in order to find an acceptable solution that allows the Application to be activated or reactivated.

8.5. Forsta may involve, and will cooperate with, law enforcement agencies and government agencies if criminal activity is suspected. Violators may also be subject to civil or criminal liability under applicable law.

8.6. With the exception of Forsta's gross negligence or willful misconduct, Forsta shall have no liability whatsoever to Developer in connection with actions taken by Forsta in the wake of actions taken by it, or its agents, under this Article 8. Furthermore, Developer understands and agrees that it shall not be entitled to any compensation whatsoever from Forsta in the wake of any action taken by Forsta under this Article 8.

8.7. For Applications already connected to the On-Demand Environment and for which Forsta takes actions under Section 8.1, Forsta may at its sole discretion charge Developer its standard rates for reasonable work necessitated by it and its agents. This may apply to situation where Forsta is to (i) investigate or otherwise respond to any apparent or actual violation by Developer and its Applications of applicable laws; (ii) remedy harm caused to Forsta or any of its other customers by the Application; and (iii) respond to third party complaints related the infringing Application

## 9. FEES, CHARGES, PRICING, PAYMENT

9.1 As consideration for the rights and licenses granted to Developer under this Agreement, Developer agrees to pay to Forsta the fees set forth on the front page of this Agreement within 15 days of the Effective Date. The fees are non-refundable.

9.2 Developer agrees to pay any sales (including VAT), use, ad valorem, personal property or general intangibles taxes and any registration fees arising out of this Agreement and the use of the Service contemplated herein, except for any taxes or fees based upon the net income of Forsta.

9.3 Each party shall be responsible for its own capital expenditure, and nothing in this Agreement suggests that a common fund shall be established to fund development of any Application.

## 10. ELEMENTS INCLUDED IN THIS LICENSE

10.1. Subject to the payment by Developer of the applicable Fees in accordance with Article 9:

10.1.1. Developer shall be entitled to request one 4-hours training session to be offered by a qualified Forsta employee via phone / WebEx. The training session shall be generic in nature and will not address Application specific assistance.

10.1.2. Developer shall be entitled to request up to a total of five (5) UserIDs, where such UserIDs are to be used solely by Developer's employees, so for them to access the Flex Test Environment for purposes relating only to testing the interoperation of Application(s) with the Software by means of Extension Points. Developer will ensure that only the Authorized Developers to which UserIDs have been assigned, use the UserID to access the Flex Test Environment, and that no more than one (1) Developer employee shall have access to each User ID, and ensure that User IDs are not shared among employees.

10.1.2.1. Access to the Flex Test Environment is provided to Developer with no guarantee of performance or availability whatsoever. No data is back-up on the Flex Test Environment.

10.1.3. Developer shall be entitled to request support for its use of the SDK and the Flex Extension Framework by e-mailing to [flex@Forsta.com](mailto:flex@Forsta.com). E-mail support is provided during ordinary business hours in US for Developer based in the US, and during ordinary business hours in Europe for Developer based in Europe / Asia / Pacific. Support is not provided on national or banking holidays.

10.1.3.1. Developer shall be entitled to a maximum combined total of 10 hours assistance without additional charge under this Agreement. Support assistance requested above and beyond 10 hours shall be deemed as consultancy assistance and will be billed to Developer at Forsta standard hourly rates.

10.1.3.2. The 10 hours of support assistance included in the Fees shall solely be used for purposes of clarifications and guidance in use of the SDK and the Flex Extension Framework. Any assistance provided by Forsta related to actual development and troubleshooting of Applications, shall be subject to its availability of resources, and will be deemed as consultancy assistance and billed to Developer at Forsta's standard hourly rates.

10.1.4. The Authorized Developers shall be granted access to the Forsta Extranet, where they will be

able to access updates on the SDK and read about changes to the Flex Extension Framework. Forsta shall within two (2) business days after the registration by Authorized Developers on Forsta's Extranet, provide such Authorized Developers with the log-in details to access Forsta's Extranet where, subject to any additional password requirements, they can download a copy of the SDK.

10.1.5. Subject to Forsta's availability of resources, and upon request and payment by Developer of applicable fees, Forsta shall make Forsta's consultants available for the training and other assistance of Developer in the use of the Flex APIs.

10.1.6. For **Public Applications** approved by Forsta via a Fit for Purpose form, Forsta may at its sole discretion market such Application through the Forsta Flex Market. Participation in Forsta Flex Market may also entail other marketing activities, including Newsletters. Developer accepts that the Forsta Flex Market may include applications that are offering the same fundamental capabilities of Developer's Application.

10.1.6.1. Developer may instruct Forsta in writing that it does not want to be part of the activities set forth in this Section 10.1.6.

## 11. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

11.1. Developer recognizes, acknowledges and agrees that the Flex Test Environment, the Flex Extension Framework and the SDK are valuable assets of the Owners, developed by the expenditure of considerable work, time and money. Developer acknowledges that all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world relating to the Flex Test Environment, the Flex Extension Framework and SDK belong and shall belong to the Owners, and Developer acknowledges that it has no proprietary interest therein. This Agreement conveys to Developer only the rights expressly granted to Developer to use the SDK and to access the Flex Extension Framework on the Flex Test Environment within the limits and subject to the restrictions established by this Agreement. All other rights in the Flex Test Environment, Flex Extension Framework and the SDK, including all IPR, shall remain in the Owners.

11.2. Except to the extent such operations cannot be prevented or restricted by law, reverse engineering or any other process or activity aimed at revealing the structure of the Flex Extension Framework and SDK or other source code, is strictly prohibited. Any modification of the SDK not being part of authorized use as described in the Documentation is also strictly prohibited.

11.3. Forsta shall make no claim to either the title or IPR of Application(s) created by Developer.

11.4. Developer shall not remove, obscure, suppress or modify any proprietary marking, including, without limitation, any trade mark or copyright notice, logo or branding, appearing in the Flex Extension Framework and SDK.

11.5. Forsta may, at its sole discretion use or incorporate into the Flex Extension Framework and the SDK any suggestions, ideas, enhancement requests, feedback or recommendation provided by Developer, provided that such suggestions, ideas, enhancement requests, feedback or recommendations do not contain any Confidential Information of Developer.

11.6. Developer shall promptly notify Forsta if Developer becomes aware of unauthorized access to, use of or copying of the SDK, Flex Extension Framework or the Flex Test Environment, or any other breach or violation of any of the terms or conditions of this Agreement.

## 12. WARRANTIES

12.1. Each Party warrants:

12.1.1. That it has the right and authority to enter into and perform its obligations under this Agreement; and

12.1.2. That it shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to the Party and to its role under this Agreement, including laws relating to Intellectual Property Rights, to the right to privacy and to defamation.

12.2. By submitting an Application to Forsta for Fit For Purpose or for Fit For Deployment, Developer represents and warrants that the Application is in full compliance with this Agreement and any applicable laws, regulations, and policies in any country in which the Application may be accessed or used.

12.3. Forsta warrants ("The Limited Warranty") that SDK will perform during the Form Term substantially in accordance with the specifications that applied on the Effective Date as set forth in the Documentation.

12.4. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS ARTICLE 12, THE SDK, THE FLEX EXTENSION FRAMEWORK AND THE FLEX TEST ENVIRONMENT (THE "MATERIALS") ARE PROVIDED "AS IS", AND "AS AVAILABLE" AND TO THE FULLEST EXTENT PERMITTED BY LAW, FORSTA EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE MATERIALS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM ARISING FROM A COURSE OF DEALING



OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY FORSTA OR ITS EMPLOYEES OR REPRESENTATIVES OF FORSTA WILL CREATE ANY WARRANTY, AND THIS WARRANTY DISCLAIMER SUPERSEDES ANY SUCH INFORMATION. DEVELOPER ACKNOWLEDGES AND AGREES IT HAS SELECTED THE MATERIALS AND IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE MATERIALS AND HAS NOT AND SHALL NOT RELY UPON ANY REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR UTILITY OF THE MATERIALS TO MEET DEVELOPER'S NEEDS OR REQUIREMENTS. FORSTA DOES NOT REPRESENT OR WARRANT THAT THE MATERIALS SHALL BE ERROR-FREE.

12.5. In the event of a breach of the Limited Warranty, Developer's sole remedy and Forsta's sole obligation is that Forsta shall utilize its best efforts to restore the SDK to the contracted level. If Forsta concludes that it is unable to restore the SDK within a reasonable time or at a reasonable cost, Forsta may terminate the Agreement, and in such case will refund a pro rata share of the unused portion of the fees Developer has pre-paid to Forsta under this Agreement.

12.6. Forsta's obligation under this Agreement does not cover failures, errors and malfunctions caused in whole or in significant part by:

12.6.1. Developer's operation of the Flex Extension Framework and SDK outside that described in the Documentation; or

12.6.2. Developer's non compliance with the terms of this Agreement and of the AUP.

12.7. Forsta shall not be liable for any Developer data system failures or damage to Developer's Equipment as a result of Developer's use of the Flex Extension Framework and SDK, or the interoperation between an Application and the On-Demand Environment, the Flex Test Environment, or any other server environment or systems, unless the failure or damage is clearly the result of a defect in the Flex Extension Framework or the SDK for which Developer has not been pre-warned by Forsta.

12.8. As a condition for invoking the Limited Warranty, Developer must give Forsta written notice of the failure, error or malfunction Developer complains of as soon as it comes to Developer's attention. Furthermore, Developer will deliver to Forsta a detailed written explanation of how to reproduce the alleged breach of the Limited Warranty. Developer understands that in lack of Developer's ability to provide such explanation, Forsta may not be able to address the issue.

12.9. If a problem Forsta has tried to resolve on the assumption that it falls within the Limited Warranty does not in fact do so, Developer shall pay for the support and other services Forsta has provided to solve the problem at the rates Forsta ordinarily charges for such services. Such charges and reimbursements are however subject to Forsta having informed Developer in writing of the possibility of its efforts being chargeable under this Agreement.

### **13. LIMITATION OF LIABILITY**

#### **FOR AGREEMENTS GOVERNED BY US LAW THE FOLLOWING APPLIES:**

13.1. TO THE FULLEST EXTENT ALLOWED BY LAW, FORSTA SHALL NOT UNDER ANY CIRCUMSTANCES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWSOEVER CHARACTERIZED, ARISING FROM OR IN ANY MANNER RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUE OR PROFITS, OR DAMAGES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION OR DELETION OF DATA, VIRUSES, OR DELAYS IN OPERATION OR TRANSMISSION, OR ANY REJECTION BY FORSTA OF A FIT FOR PURPOSE APPLICATION OR A FIT FOR DEPLOYMENT APPLICATION, OR A REVOCATION OF CONNECTION TO THE ON-DEMAND ENVIRONMENT FOR ANY APPLICATION. IN THE EVENT OF ANY BREACH BY EITHER PARTY OF THIS AGREEMENT, WITH THE EXCEPTION OF BREACHES OF ARTICLE 15: "CONFIDENTIAL INFORMATION", ARTICLE 14: "INDEMNIFICATION" OR SUB-SECTION 12.1.2: "APPLICABLE LAWS", IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE BREACHING PARTY EXCEED 125% OF THE TOTAL AMOUNT PAID TO FORSTA BY DEVELOPER DURING THE PRECEDING TWELVE MONTHS, PLUS, IN THE EVENT DEVELOPER IS THE BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO FORSTA AT THE TIME OF THE DAMAGES AWARD.

13.2. EXCEPT AS SET FORTH IN THIS SECTION, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, IF ANY, SHALL BE LIMITED SOLELY TO DAMAGES AWARDED BY A COURT OF COMPETENT JURISDICTION, IN ACCORDANCE WITH THE PROVISIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE. EACH PARTY ACKNOWLEDGES AND AGREES THE FOREGOING LIMITATIONS, DISCLAIMER AND EXCLUSIONS ARE REASONABLE AND PART OF THE BARGAINED-FOR ALLOCATION OF RISK AND SHALL NOT, AND WAIVES ANY RIGHT TO, PLEAD, ALLEGE OR CLAIM ANY SOLE OR EXCLUSIVE RIGHT OR REMEDY PROVIDED HEREIN IS INVALID OR UNENFORCEABLE BECAUSE IT WILL OR DOES FAIL OF ITS ESSENTIAL PURPOSE.

13.3. No claim, demand, action, legal, regulatory, administrative, judicial or arbitral proceeding may be initiated, brought or commenced by either party against the other more than one year after the cause of action first arose

**FOR AGREEMENTS GOVERNED EITHER BY ENGLISH OR NORWEGIAN LAW THE FOLLOWING APPLIES:**

13.4. NEITHER PARTY'S LIABILITY: (a) FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS; (b) FOR FRAUDULENT MISREPRESENTATION; OR (c) THAT IS NOT PERMITTED TO BE EXCLUDED OR LIMITED BY APPLICABLE LAW; IS EXCLUDED OR LIMITED BY THIS AGREEMENT, EVEN IF ANY OTHER TERM OF THIS AGREEMENT WOULD OTHERWISE SUGGEST THAT THIS MIGHT BE THE CASE.

13.5. OTHER THAN AS SET OUT IN SECTION 13.4, NEITHER PARTY SHALL BE LIABLE (WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR FOR ANY OTHER REASON) FOR ANY: (a) LOSS OF PROFITS; (b) LOSS OF SALES; (c) LOSS OF REVENUE; (d) LOSS OF ANY SOFTWARE OR DATA; (e) LOSS OF USE OF HARDWARE, SOFTWARE OR DATA; (f) DAMAGES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION OR DELETION OF DATA, VIRUSES, OR DELAYS IN OPERATION OR TRANSMISSION OR (g) INDIRECT, CONSEQUENTIAL OR SPECIAL LOSS OR (h) ANY REJECTION BY FORSTA OF A FIT FOR PURPOSE APPLICATION OR A FIT FOR DEPLOYMENT APPLICATION, OR (j) A REVOCATION OF CONNECTION TO THE ON-DEMAND ENVIRONMENT FOR ANY APPLICATION.

13.6. SUBJECT TO SECTIONS 13.4 AND 13.5 AND WITH THE EXCEPTION OF BREACHES OF ARTICLE 15: "CONFIDENTIAL INFORMATION", ARTICLE 14: "INDEMNIFICATION" OR SUB-SECTION 12.1.2: "APPLICABLE LAWS", EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT AND IN RELATION TO ANYTHING WHICH THAT PARTY HAS DONE OR NOT DONE IN CONNECTION WITH THIS AGREEMENT (AND WHETHER THE LIABILITY ARISES BECAUSE OF BREACH OF CONTRACT, NEGLIGENCE OR FOR ANY OTHER REASON) SHALL BE LIMITED TO AN AMOUNT EQUAL TO 125% OF THE TOTAL AMOUNT PAID TO FORSTA BY DEVELOPER DURING THE PRECEDING TWELVE MONTHS, PLUS, IN THE EVENT DEVELOPER IS BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO FORSTA AT THE TIME OF THE DAMAGES AWARD.

13.7. No claim, demand, action, legal, regulatory, administrative, judicial or arbitral proceeding may be initiated, brought or commenced by either party against the other more than one year after the cause of action first arose

## **14. INDEMNIFICATION**

14.1. Developer shall defend, indemnify and hold the employees, officers, directors and agents of Forsta and its Affiliates harmless from and against any claim, including any claim by a third party for infringement of any IPR (including claims of copyright, patent, trade secret or other proprietary rights violation) or for violation of any law relating to defamation or the right to privacy, arising out of or related to any Application or any actual or attempted access to or use of the Flex Extension Framework or the SDK or the Flex test Environment by the Developer or any third party as occasioned by Developer, in any manner and/or for any purpose that violates the terms of this Agreement.

14.2. Forsta will defend claims brought against the employees, officers, directors and agents of Developer and its Affiliates arising out of or related to the actual or alleged infringement of any United States or EEA patent, copyright or trademark arising from Developer's access to and use of the SDK and the Flex Test Environment as permitted and in accordance with the terms and conditions of this Agreement. EEA refers to any country belonging to the European Economic Area.

14.3. The indemnification obligations contained in this Article 14 shall survive any termination of this Agreement and are subject to the party requesting indemnification:

14.3.1. promptly notifying the other party of any claim or litigation that is subject to such indemnification obligation; and

14.3.2. not making any statement or action that will cause an increase to the other party's liability; and

14.3.3. permitting the indemnifying party, at its election, to control the defense and/or settlement of any such claim or litigation. The party requesting indemnification shall have the right, at its own expense, to participate in the defense of any such claim or litigation through counsel of its own choosing, and shall in any event cooperate reasonably with the indemnifying party in the defense of such claim or litigation.

14.4. If at any time an allegation of infringement of any third party rights is made, or in Forsta's opinion is likely to be made, in respect of the SDK, Forsta may at its own expense:

14.4.1. obtain for Developer the right to continue using the SDK; or

14.4.2. modify or replace the SDK so as to avoid infringement; or

14.4.3. In the event Forsta is unable to offer either 14.4.1 or 14.4.2 at a reasonable cost and within a reasonable time, Forsta may terminate this Agreement and reimburse Developer pro rata the sums pre-paid by Developer.

14.5. This Article states the entire liability of Forsta with respect to the infringement or alleged infringement of any third party rights of any kind whatever by the SDK.

## **15. CONFIDENTIALITY**

15.1. All information exchanged between the Parties during the Form Term is defined as and shall remain,

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the "Confidential Information" of the disclosing party (the "Disclosing Party"), and shall not be disclosed to any third party by the receiving party (the "Recipient") without the Disclosing Party's prior written consent. Without limiting the foregoing, the Flex Test Environment, the Flex Extension Framework and SDK are defined as the Confidential Information of Forsta, and subject to section 15.4 below, any Fit for Purpose form and Fit for Deployment form are defined as the Confidential Information of Developer.

15.2. The Recipient undertakes:

15.2.1. to treat and hold as confidential all Confidential Information obtained from the Disclosing Party during the currency of this Agreement; and

15.2.2. to use such Confidential Information solely for the purpose for which it was supplied; and

15.2.3. other than as required under any applicable law or regulation, not to disclose Confidential Information in whole or in part to any third party without the Disclosing Party's prior written consent, and to only disclose Confidential Information to its own employees on a need to know basis who are subject to confidentiality agreements covering the Confidential Information and who are informed by the Recipient of its confidential nature and each Party's obligations under this Agreement; and

15.2.4. to not use Confidential Information to design, develop or manufacture similar products or products in competition to those of the Disclosing Party, for itself or for third parties.

15.3. The mutual confidentiality terms set forth herein shall apply solely to the Confidential Information disclosed by either Party to the other during the Form Term, however, the obligations as to confidentiality shall continue to apply notwithstanding the termination of this Agreement for whatever reason.

15.4. Forsta works with many software developer companies, and some of their products may be similar to or compete with Developer Applications. Forsta may also be developing its own similar or competing Applications and products or may decide to do so in the future. Notwithstanding anything to the contrary in this Agreement, Forsta's shall have the right to develop, acquire, license, market, promote, or distribute products or technologies that perform the same or similar functions as, or otherwise compete with, Application or any other products or technologies that Developer may develop, produce, market, or distribute, provided however that Forsta shall not use any of Developer's Confidential Information in doing so. Forsta shall however be free to use for any purpose the residuals resulting from access to or work with Developer Confidential Information disclosed hereunder. The term "residuals" means information in non-tangible form which may be retained in the unaided memory by persons who have had access to the Confidential Information so long as such persons have not studied the information for the purpose of replicating the same from memory. Forsta shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant Forsta a license under Developer's copyrights or patents

## 16. FORCE MAJEURE

16.1. Each Party shall be excused from delays in its performance of or failure to perform its obligations under this Agreement other than payment obligations, if performance is prevented or delayed by events outside the Party's ordinary business control, including delays or interruptions due to third party connectivity failure, telecommunications failure and similar operational failures. However, in the event that a Party's delay in performance or failure to perform due to such events has continued for eight weeks, then the other Party may terminate the Agreement upon ten (10) days' written notice thereafter.

## 17. MONITORING OF APPLICATIONS CONNECTED TO THE ON-DEMAND ENVIRONMENT

17.1. For Applications connected to the Forsta On-Demand Environment, Forsta has the right to monitor, record and store activity in connection with Developer's Applications interoperation with the On-Demand Environment (including but not limited to information about the Application, computers, Forsta Client software, other software and peripherals) so to, amongst other, ensure that said Application complies with the terms of this Agreement, the terms of the Fit For Purpose and the Fit for Deployment, and the AUP terms. Forsta employees and any authorized Forsta contractors may at any time access and review such information, subject to the confidentiality terms herein.

## 18. ASSIGNMENT

18.1. Developer may not assign, transfer or convey this Agreement or any rights or obligations hereunder, to any other person, firm or enterprise, without the prior written consent of Forsta. Forsta may assign this Agreement providing that the assignee appears to have the financial and operational viability to perform its obligations under this Agreement.

18.2. Any assignment or attempted assignment contrary to the terms of this Article will be a material breach of this Agreement and shall be null and void. This Agreement and all attachments will be binding upon the successors, legal representatives and permitted assigns of the parties.

## 19. TERM AND TERMINATION

19.1. Unless the Agreement has already been terminated in accordance with the provisions of this Agreement, the Agreement automatically terminates at the Last Date without the need of any further notification by either Party. In order for the relationship entailed herein to continue, a new agreement will need to be executed before the Last Date, and such new agreement shall succeed this Agreement.

19.2. Developer undertakes to execute a new agreement before the Last Date as long as Developer has in place valid EULAs with Forsta Clients.

19.3. Each Party shall have the right, without prejudice to its other rights or remedies and without being liable to the other Party for any loss or damage which may be occasioned, to terminate this Agreement immediately by written notice to the other if the other is in material or persistent breach of this Agreement, and either that breach is incapable of remedy or it shall have failed to remedy that breach within fifteen (15) business days after receiving written notice requiring it to do so.

19.4. Developer shall be deemed to be in material breach if, without limitation, Developer:

19.4.1. Grants individuals other than Authorized Developers access the Flex Extension Framework or the SDK or to the Flex Test Environment; and/or

19.4.2. Uses or permits the use of the Flex Extension Framework, the Flex Test Environment or the SDK in violation of the terms of this Agreement; and/or

19.4.3. Fails to pay invoices and Application Fees in a timely manner and thereafter fails to cure the payment default within ten (10) business days after Developer receives written notice of the default from Forsta; and/or

19.4.4. Uses of the Flex Extension Framework and the SDK to design or develop a Application(s) without Forsta's prior written approval as set forth in this Agreement; and/or

19.4.5. Materially changes the Application, or the use thereof, without obtaining prior approval from Forsta by means of a new Fit For Purpose form; and/or

19.4.6. Attempts to hide, misrepresent or obscure any features, content, services or functionality in Applications submitted to Forsta (either Fit For Purpose or Fit For Deployment) or otherwise hinders Forsta from being able to fully review such Application.

19.5. Either Party may terminate the Agreement effective immediately if the other Party becomes insolvent, becomes the subject of bankruptcy proceedings or similar proceedings, comes under the administration of a receiver or administrator or violates its obligation to keep Confidential Information in confidence under the terms of this Agreement.

19.6. On the termination or expiration of this Agreement for any reason, and subject to any legal or regulatory obligations imposed upon the Recipient requiring it to retain copies of specific Confidential Information, each party shall return Confidential Information of the other or destroy such Confidential Information, and upon request of the other party, certify destruction in writing within ten (10) days.

19.7. The termination or expiration of the Agreement shall terminate all of the Parties' rights and obligations, with the exception of payment obligations and other rights and obligations which may have accrued before the date of termination or expiration, including, without limitation rights and obligations herein concerning IPR and confidentiality.

## 20. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of, and resolution of any disputes arising from or related to this Agreement shall be subject to exclusive jurisdiction of the courts located in, the jurisdiction corresponding with the Forsta entity as stated in the below chart:

Forsta entity	Jurisdiction
Forsta Worldwide, Inc. of Delaware, USA	State of Delaware excluding its conflicts of law provisions
Forsta Inc. of Delaware, USA	State of Delaware excluding its conflicts of law provisions
Forsta Australia Pty. Ltd. of Australia	New South Wales, Australia

Forsta Solutions Inc. of Canada	British Columbia, Canada
Forsta AS of Norway	Norway
Forsta Worldwide AB of Sweden	Sweden
Forsta d.o.o. Sarajevo of Bosnia & Herzegovina	Bosnia & Herzegovina
Forsta (Europe) Ltd of England	England and Wales
Forsta Worldwide Ltd of England	England and Wales

## 21. NOTICES

21.1. Notices required under this Agreement shall be in writing and addressed to the Parties as indicated on the first page of this Agreement or as later updated in writing. Notices required for termination by Article 19 shall be by certified mail, courier delivery, or by facsimile with confirmed receipt of same.

21.2. Any communication between the Parties with regard to this Agreement, including any negotiations, notices, disputes or court trials etc, shall be made and held in the English language.

## 22. MISCELLANEOUS

22.1. Any use of the word "including" herein shall mean "including but not limited to".

22.2. If any term(s), provision(s), covenant(s), or condition(s) of this Agreement is held by a Court or other tribunal of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

22.3. This Agreement contains the entire agreement between the Parties relating to its subject matter, and supersedes any previous communication, representation or promise, whether written or oral. The Parties acknowledge that they have placed no reliance on any promise or representation not incorporated in this Agreement, and have not been induced to enter into this Agreement by any such promise or representation. Any subsequent agreement which modifies any part of this Agreement must be in writing, must be expressly designated as a modification of this Agreement, and must be signed by authorized representatives of both Parties.

22.4. All waivers must be in writing. A waiver of, or failure to enforce a provision of or right under this Agreement on one or more occasions, shall not be deemed a waiver of that provision or right, nor of any other provision or right under this Agreement on any future occasion.

22.5. The Parties shall have the status of independent contractors relative to each other, and nothing herein shall be deemed to place the Parties in the relationship of employer-employee, principal-agent, franchisor-franchisee or partners in a joint venture.

22.6. The headings of the Articles of this Agreement are included for convenience and are not to be used in interpreting the Agreement.

22.7. Neither Party shall be entitled to use the other Party's trademarks, logos and similar, without the prior written approval by the other Party.

22.8. Either the originals or copies, including facsimile transmissions of this Agreement may be executed as counterparts, each of which is deemed an original, and all of which together constitute one agreement. The signature of all Parties need not appear on the same counterpart and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other Party to this Agreement.

22.9. Changes and additions to this Agreement shall only be valid when made in writing and signed by authorized representatives of both Parties.

22.10. No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.



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Capitalized terms in this Agreement, shall have the same meaning set out in the Sales Order unless otherwise stated elsewhere herein. Except as modified herein, the terms of the Agreement remain unchanged and in full force and effect. Where any conflict arises between this Agreement, and the Sales Order, then the terms of this Agreement shall prevail and override the Sales Order.

## SCHEDULE 1

### Minimum terms to be included in Developer's EULA with Forsta Clients

#### 1. Acknowledgement:

Developer and the Forsta Client must acknowledge that the EULA is concluded between Developer and the Forsta Client only, and not with Forsta, and Developer, not Forsta, is solely responsible for the Application(s), its performance and content thereof. Furthermore, Developer and the Forsta Client must acknowledge that approval or marketing by Forsta of any Application, shall in no way be deemed as any guarantee of quality and/or endorsement of the described Application.

#### 2. Scope of License:

The license granted to the Forsta Client for use of the Application(s), must be limited to a non-transferable license to use the Application(s) solely in interoperation with the Software.

#### 3. Maintenance, Support and Documentation:

Developer must be solely responsible for providing any documentation, maintenance and support services with respect to the Application(s), as specified in the EULA, or as required under applicable law. Developer and the Forsta Client must acknowledge that Forsta has no obligation whatsoever to furnish any documentation, maintenance and support services with respect to the Application(s). Developer shall be fully responsible for providing Forsta Clients with proactive notifications ahead of maintenance operations, or in conjunction with disruption or interruption of service.

#### 4. SLA and Equipment:

Developer and Forsta Client must reflect into the EULA that the Application(s) will not be hosted by Forsta, and that Forsta shall have no responsibility whatsoever for the Equipment on which the Application(s) is hosted. Developer and Forsta Client must acknowledge that any failure of performance in the Software because of any dependency on faulty performance of the Application(s) or the Equipment shall not be deemed as Forsta's responsibility. Any performance guarantees for the Software provided by Forsta to Forsta Client under any agreement in place between Forsta Client and Forsta shall therefore explicitly be voided in the EULA as it pertains to the Application(s).

#### 5. Data and Equipment Security:

Developer must explicitly state that data security and integrity of any data collected by, inputted into or processed by the Application(s), shall be Developer's sole and full responsibility and that Forsta is no party to that. In the event Developer provides the Equipment on which the Application is running, Developer shall inform the country in which such Equipment is located.

#### 6. Warranty:

Developer must be solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. The EULA must provide that, in the event of any failure of the Application(s) to conform to any applicable warranty, the Forsta Client shall notify Developer, and that Forsta will have no warranty obligation whatsoever with respect to the Application(s), and any claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Developer's sole responsibility.

#### 7. Product Claims:

Developer and the Forsta Client must acknowledge that Developer, not Forsta, is responsible for addressing any claims of the Forsta Client or any third party relating to the Application(s) or the Forsta Client's possession and/or use of that Application(s), including: (i) product liability claims; and (ii) any claim that the Application(s) fails to conform to any applicable legal or regulatory requirement.

#### 8. Indemnification:

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Developer and the Forsta Client must acknowledge that, in the event of any third party claim that the Application(s) or the Forsta Client's possession and use of that Application(s) infringes that third party's intellectual property rights, Developer, not Forsta, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

### **9. Developer Name and Address:**

Developer must state in the EULA Developer's name and address, and the contact information (telephone number; E-mail address) to which any Forsta Client questions, complaints or claims with respect to the Application(s) should be directed.