

# **DESKTOP SOFTWARE SCHEDULE**

This Desktop Software Schedule (this "Schedule") is part of and subject to the master services agreement, however named, ("Agreement") between the Forsta entity ("Forsta") and client ("Client") referenced in the applicable Sales Order, Order Document, or other commercial agreement. This Schedule governs the use of the Desktop Software only (see defined term below). Unless otherwise defined, capitalised terms have the meanings assigned to them in the Agreement. Where any conflict arises between this Schedule and the Agreement, then the terms of this Schedule shall prevail and override the Agreement.

## **1.INTRODUCTION**

- 1.1 The Desktop Software is only to be loaded onto and accessed from Client's own Desktop Equipment (as defined below) for which Forsta has no responsibility.
- 1.2 To the extent Client holds licenses to the Forsta Plus SaaS Service (formerly known as Horizons), all obligations on Forsta in the Agreement which relate to any software hosted on the SaaS Hosting Environment, including but not limited to any SLA, shall be deemed void and not apply to any Desktop Software. The Forsta Plus Software is not Desktop Software and the terms in this Schedule shall accordingly not apply to Forsta Plus Software.

## **2.DEFINITIONS SPECIFIC TO THIS SCHEDULE**

- 2.1 **Copy:** One Copy is defined as one installation of one Desktop Software product on one workstation (or server) such that it can only be used by one person at any given time, or in the case of a server installation by the designated number of concurrent users, and where such Copy is valid for a period of time.
- 2.2 **Desktop Software:** means the products known as Data Central, Galaxy, Galileo, PaloMARS, PaloMARS Adex, Forsta Scan (formerly known as Bellview Scan), SuperNova, TV Planet, Zodiac or any other Forsta product which may be used on a standalone PC not linked to a network, and for each product the associated documentation and any media on which said product and its documentation are recorded or printed and delivered.
- 2.3 **Designated Desktop Users:** means individually named users (or concurrent users if so specified in the related Order Form) who must either be: (i) employees, (ii) temporary staff, or (iii) Contractors, of Client or of Client's Affiliates, who are authorized to use the Desktop Software.
- 2.4 **Desktop Equipment:** means the hardware platform and software infrastructure on which the Desktop Software will be installed by Client, including the network in the case of server installations, and for which Client bears the full responsibility. This may include, but is not limited to, laptops, PCs and servers.
- 2.5 Any other capitalised terms as used in this Schedule are as per the definitions in the Agreement 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 Schedule and the Agreement, then the terms of this Schedule shall prevail and override the Agreement .

## **3.CLIENT'S SYSTEM REQUIREMENTS**

- 3.1 The applicable System Requirements are specified in the documentation of the relevant Desktop Software product, or as amended from time to time at Forsta's sole reasonable discretion. Forsta shall not be responsible for any issues in relation to Client's use of the Desktop Software that are caused as a result of Client's failure to comply with the at any time applicable system requirements.

## **4.DESIGNATED DESKTOP USERS**

- 4.1 The Desktop Software shall only be accessed by one Designated Desktop User per workstation. Client shall implement and maintain security measures no less restrictive than those Client uses to protect its own Confidential Information, but in no event less than reasonable efforts, to safeguard the Desktop Software from unauthorized access, use or copying.

## **5.DELIVERY AND INSTALLATION**

- 5.1 The Desktop Software shall be made available to Client via download from Forsta's extranet, or as otherwise defined by Forsta.
- 5.2 Client is responsible for installing the Desktop Software unless otherwise agreed in writing by Forsta.
- 5.3 Client is permitted to make copies of the Desktop Software up to the maximum number authorized in writing on a mutually executed Forsta Plus Order Form or in the case of an installation of a server, Client may not make copies unless more than one installation is specifically referenced in the relevant Order Form.
- 5.4 Client warrants that it shall only: (i) install, and/or (ii) activate, and/or (iii) operate, the number of Copies of the Desktop Software on Desktop Equipment as set forth in the applicable Forsta Plus Order

Form and in accordance with the conditions appearing on such Order Form, and that any failure to comply with this shall be deemed a material breach of the Agreement by Client.

- 5.5 The Desktop Software may only be utilized at the address given on the front page of this Agreement (the "Location") or within the licensed geographical area for each Desktop Software product as agreed in writing on an Order Form.
- 5.6 If Client wishes to install and/or activate and/or operate copies of the Desktop Software in addition to those already licensed, or in other geographical areas, an Order Form must be executed by the Parties and Client shall, where applicable to that specific Desktop Software, obtain from Forsta accordingly updated License Key(s) where applicable.
- 5.7 In addition to the obligations set forth in the Agreement regarding the return and/or deletion of Confidential Information, Client shall on an on-going basis throughout the Term, promptly and diligently delete from workstations or servers any and all copies of the Desktop Software that exceed the number authorized under this Agreement.

## **6.SUPPORT & UPGRADES**

- 6.1 Forsta may from time-to-time release upgrades or bug fixes (together "Upgrades") of the Desktop Software. These Upgrades will be made available to Client through the Forsta extranet or as otherwise provided by Forsta. Client is responsible for installing such Upgrades and Forsta retains the right to refuse to provide support where an Upgrade has not been installed.
- 6.2 Forsta shall only provide support to Client's Designated Support Contact(s) in the manner described in the Agreement.

## **7.LICENCE KEYS**

- 7.1 Client acknowledges and agrees that access to and use of the Desktop Software is currently, or may in future be, protected by License Keys having the purpose of enabling usage of the Desktop Software only to the extent set forth in the Agreement and any Order Forms thereunder. Such License Keys will disable the functioning of the Desktop Software if a new valid License Key is not obtained and installed by Client by the appropriate date.
- 7.2 Client will be responsible at its own expense for complying with all applicable export and import laws, regulations and taxes relating to the export and import of the Desktop Software and its Licence Keys.

## **8.PROHIBITED USE OF DESKTOP SOFTWARE**

- 8.1 In addition to any stated limitations in the Agreement, Client shall not offer the Desktop Software as part of a network, other than for use by the Designated Desktop Users.

## **9.WARRANTIES**

- 9.1 Notwithstanding anything to the contrary in the Agreement, this Article states the sole and exclusive warranties that apply to Desktop Software. Forsta warrants:
  - 9.1.1 The Limited Desktop Warranty: That the Desktop Software as provided to Client will be free of viruses, and will when properly installed on Desktop Equipment abiding by the applicable System Requirements perform substantially in accordance with the specifications set forth in the applicable documentation at any time, and that the Desktop Software when used on the Desktop Equipment in accordance with the documentation will be substantially free of defects affecting Client's use of the Desktop Software. Any Additional Services provided under this Agreement will be performed in accordance with generally accepted industry practices and performance standards.
  - 9.1.2 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS ARTICLE 9, THE DESKTOP SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND TO THE FULLEST EXTENT PERMITTED BY LAW, FORSTA EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE DESKTOP SOFTWARE, INCLUDING ANY WARRANTIES, CONDITIONS OR OTHER TERMS AS TO 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. CLIENT ACKNOWLEDGES AND AGREES IT HAS SELECTED THE DESKTOP SOFTWARE AND IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE DESKTOP SOFTWARE AND HAS NOT AND SHALL NOT RELY UPON ANY REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR UTILITY OF THE DESKTOP SOFTWARE TO MEET CLIENT'S NEEDS OR REQUIREMENTS. FORSTA DOES NOT REPRESENT OR WARRANT THAT THE DESKTOP SOFTWARE SHALL BE UNINTERRUPTED OR ERROR-FREE. NOTHING IN THIS SECTION 9.1 LIMITS OR EXCLUDES FORSTA'S LIABILITY FOR FRAUDULENT MISREPRESENTATION.

- 9.1.3 In the event of a breach of the Limited Desktop Warranty, Client's and Client Affiliates' sole remedy and Forsta's sole obligation is that Forsta shall utilize its best efforts to restore the Desktop Software to the contracted level. If Forsta concludes that it is unable to restore the Desktop Software within a reasonable time or at a reasonable cost, Forsta may terminate this Schedule, and in such case will refund a pro rata share of the unused portion of the fees Client has pre-paid to Forsta in respect of Desktop Software under this Schedule.
- 9.2 Forsta shall not be liable for any failures, errors and malfunctions caused in whole or in significant part by:
- 9.2.1. Client's or any of Client Affiliates' or Contractors': (i) operation of the Desktop Software in an erroneous way or outside what described in the documentation; (ii) non-compliance with any of the terms of this Agreement; or (iii) use of the Desktop Software in combination with software or equipment not expressly approved by Forsta via the documentation or in a support ticket;
  - 9.2.2. the access to or operation of the Desktop Software by someone who is not a Designated Desktop User and where such access has been occasioned or permitted by Client or any Client Affiliate or any Contractor; or
  - 9.2.3. the failure of Client's or any Client Affiliates' or Contractors' internal systems to meet the system requirements as set forth in the documentation in effect at the time of occurrence; or
  - 9.2.4. defects or malfunctions in the Desktop Equipment; or
  - 9.2.5. changes made in the configuration or settings of the Desktop Equipment without Forsta's written approval, outside that set forth in the documentation; or
  - 9.2.6. modifications in the Desktop Software that have not been performed by Forsta or approved by Forsta in writing; or
  - 9.2.7. Client's misuse or faulty operation of the Desktop Software; or
  - 9.2.8. Client's operation of the Desktop Software outside the Location or the licensed geographical area.
- 9.3. Forsta shall not be liable for any Client or any Client Affiliates' or Contractors' data system failures or damage to Client's or any Client Affiliates' or Contractors' internal system as a result of interaction between the Desktop Software and such internal systems, unless the failure or damage is clearly the result of a defect in the Desktop Software or a malfunctioning of the Desktop Software for which Client has not been pre-warned by Forsta.
- 9.4. As a condition for invoking the Limited Desktop Warranty, Client must give Forsta written notice of the failure, error or malfunction Client complains of as soon as it comes to Client's attention. Furthermore, Client will deliver to Forsta a detailed written explanation of how to reproduce the alleged breach of the Limited Desktop Warranty. Client understands that in lack of Client's ability to provide such explanation, Forsta may not be able to address the issue.
- 9.5. If a problem Forsta has tried to resolve on the assumption that it falls within the Limited Desktop Warranty does not in fact do so, Client shall pay for the Support and other services Forsta has provided to investigate the problem at the rates Forsta ordinarily charges for Additional Services. Such charges and reimbursements are however subject to Forsta having informed Client in writing (through the relevant support ticket or otherwise) of the possibility of its efforts being chargeable under this Section.
- 9.6. Client shall make reasonable efforts not to provide any person or entity who is in the business of developing data collection and/or reporting software with access to the Desktop Software.

## **10.LIMITATION OF LIABILITY**

- 10.1 Save as amended in this Article, the limitations of liability as stated in the Agreement in respect of the Licensed Materials shall apply equally to the Desktop Software.
- 10.2 The calculation of the limitation of liability in respect of Desktop Software, shall however, only relate to sums associated with the respective Desktop Software and shall specifically not incur any liability on either Party in relation to any sums associated with the Forsta Plus Software.

## **11.INDEMNIFICATION**

- 11.1.Save as amended in this Article, the indemnification obligations as stated in the Agreement in respect of the Licensed Materials shall apply equally to the Desktop Software.
- 11.2.Forsta will have no liability for any claim:
- 11.2.1 based on use of other than a supported and unaltered version of the Desktop Software; or
  - 11.2.2 related to the Desktop Equipment; or
  - 11.2.3 based on use of the Desktop Software in combination with third party software not approved by Forsta; or
  - 11.2.4 based on use of the Desktop Software where the system requirements in Article 3 of this Schedule are not abided by; or

- 11.2.5 based on Client's refusal to use modified or replacement Desktop Software and documentation supplied or offered to be supplied by Forsta for the purpose of avoiding infringement.
- 11.3. In the event Forsta is unable to offer a remedy for any claim of alleged infringement of third party rights relating to the Desktop Software at a reasonable cost and within a reasonable time, Forsta may terminate this Schedule and reimburse Client a pro rata share of the unused portion of the fees paid by Client in respect of Desktop Software under this Schedule.
- 11.4. 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 Desktop Software.