

## Horizons Software as a Service (“SaaS”) Agreement

Access to the SaaS is provided by the Forsta Entity stated in the applicable Sales Order (“Forsta”). This Agreement shall govern the use of all Software and Services unless specifically noted otherwise in this Agreement.

The term “**Client**” as used herein refers to you and all individuals and entities accessing the Services for any reason.

PLEASE READ THIS DOCUMENT CAREFULLY. BY USING OR CONTINUING TO USE THE SERVICES, YOU ARE INDICATING YOUR ACCEPTANCE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN YOU AND FORSTA. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS STATED IN THIS AGREEMENT, FORSTA IS NOT WILLING TO ALLOW YOU TO USE THE SERVICES AND YOU SHOULD IMMEDIATELY STOP USING THE SERVICES.

### Terms and Conditions

**WHEREAS:** Forsta provides multitenant web-based services and certain other services and products related thereto, and

**WHEREAS:** Client wishes to obtain from Forsta a right to access and use the Service and to obtain from Forsta certain other related services and products further specified in this Agreement (hereinafter defined), and Forsta wishes to provide such right to access and use the Service to Client and to provide such other services and products on the terms set out herein.

NOW THEREFORE, the Parties (defined herein) hereto agree as follows:

#### 1. CONTRACT DOCUMENTS

- 1.1. This agreement (the “**Agreement**”) consists of:
  - 1.1.1. the terms and conditions set out below and all attached schedules (collectively, “**T&C**”);
  - 1.1.2. any Sales Orders incorporated by reference to Schedule 3;
  - 1.1.3. any addenda to the above mentioned documents agreed in a written instrument between the Parties from time to time signed by authorized representatives; and
  - 1.1.4. any other documents that are expressly referred to and incorporated in this Agreement.
- 1.2. In the event of conflict or inconsistency between the T&C on the one part, and the Sales Orders, statement of work, or any other documents that are expressly referred to and incorporated into this Agreement on the other, the T&C shall govern except when the terms in a Sales Order, statement of work, or any other referenced or incorporated document directly state that they supersede a term or condition of the T&C. Each addendum agreed in writing between the Parties takes precedence over the original document which it amends, and any previously agreed addenda thereto. No terms or conditions endorsed upon, delivered with, or contained in Client’s purchase order, specification, or similar document will form part of this Agreement unless agreed in a signed written instrument between the Parties.
- 1.3. The definitions applicable to the terms used in the text of this Agreement are either set forth in-text or in Schedule 7.

#### 2. ACCESS AND USE

- 2.1. Subject to the terms of this Agreement, Forsta shall provide Client (except as set forth in Section 21.1 below), for the duration of the Term, access and use of the Service and the Documentation, as provided herein. The functionalities available as part of the Service may vary over time, provided however that removed functionality will be replaced with other functionality permitting performance of substantially the same fundamental activities.
- 2.2. Unless this Agreement has already been terminated in accordance with the provisions of Article 18 below or any other Article herein, this Agreement automatically extends for successive terms each of one (1) year (each, a “**Term Extension**”), unless either Party has sent notification to the other Party in writing no later than thirty (30) days before the expiration of the then-current Term that this Agreement will not be extended. In case of such automatic extension, if no renewal Sales Order has been executed between the Parties, each successive Term Extension will be subject to Access and Use Fees and the order of Horizons Units in the same quantities as the total across all Sales Orders applicable to the immediately preceding twelve-month period, and at the same annual price (or at the price specifically agreed in a signed written instrument by the Parties), but with a consumer price index adjustment (“**CPI Adjustment**”) as per Schedule 2, Article 5.
- 2.3. The access granted to Client to the Service in accordance with this Agreement includes access for Client’s Affiliates. Upon request by Forsta, Client shall present to Forsta a list of all Client Affiliates having been granted access to Forsta Materials, and confirm that such Affiliates are, in fact, Affiliates of Client as defined herein. Client shall remain responsible for all acts and omissions of its Affiliates under this Agreement, as if those were the actions or omissions of the Client itself.
- 2.4. Should any Client’s Affiliates at any time cease to have such Affiliate status as defined in this Agreement,
  - 2.4.1. all rights granted hereunder to such Affiliate will immediately become null and void;
  - 2.4.2. Client shall remove access to the Services from the Affiliates and its agents immediately; and
  - 2.4.3. Client will remain responsible for the acts of the former Affiliate and its agents until access has been properly removed.
- 2.5. Client is responsible for understanding the regulatory requirements applicable to Client’s business and for selecting and using the Forsta Materials in a manner that complies with the applicable requirements. Unless otherwise agreed in writing

as part of this Agreement, Client may not use the Forsta Materials in a way that would subject Forsta to such regulatory requirements, unless Forsta expressly agrees in writing otherwise. For purposes of illustration only, and not of limitation, any use by Client of the Service for purposes of processing “protected health information” (as defined in 45 C.F.R. §160.103 under US federal regulations) is only permitted upon the Parties’ execution of a separate business associate agreement.

### 3. SYSTEM REQUIREMENTS

- 3.1. Terms regarding system requirements applicable to Client’s use of the Service are set out in Schedule 1.

### 4. DESIGNATED USERS

- 4.1. Client is responsible for ensuring that the Service shall only be accessed and used by individually named users who are employees of Client, Client Affiliates, or Contractors and who are provided with a User ID by Forsta (the “**Designated Users**”). User IDs shall be uniquely named and refer to a named e-mail address (no generic names and addresses are accepted). No more than one (1) Designated User shall have access to each User ID, and Client shall ensure that User IDs are not shared. Client shall be responsible for all activity that occurs under each User ID and shall be liable to Forsta for the acts and omissions of each Designated User (whether a Designated User of Client or of any Client’s Affiliate or of any Contractor) as though they were the acts and omissions of Client itself.
- 4.2. Client retains the right to re-assign User IDs upon first notifying Forsta (email notice would suffice) and obtaining from Forsta a new User ID, as long as such re-assignments do not contradict any other terms of this Agreement. Client shall ensure that passwords shall always be changed when a User ID is being transferred from one Designated User to another. To increase the number of User IDs allocated to Client, a Sales Order must be executed by the Parties.

### 5. PERMITTED USE OF THE FORSTA MATERIALS

- 5.1. Client and Client’s Affiliates may use the Service to process its and their own data for its and their own internal and commercial business purposes only, including activities which Client or any Client’s Affiliate performs on behalf of its or their clients, provided however that Client shall not, and will ensure that its Affiliates shall not directly or indirectly resell or sublicense the Forsta Materials or purport to do so.
- 5.2. Client and Client Affiliates are permitted:
  - 5.2.1. to invite Respondents to access the Service for the limited purposes of responding to surveys made available through the Service by Client or any of Client’s Affiliates; and
  - 5.2.2. upon purchasing the relevant Add-On or Third-Party Accesses to grant third parties access to the relevant reporting features of the Software, including closed feedback loops and action management. Third-Party Accesses are uniquely named accesses and shall not be shared.
- 5.3. Client may make additional copies of the Documentation provided that distribution of such copies will be restricted to Client’s Personnel and will be subject to the mutual confidentiality terms set out in Schedule 6.
- 5.4. Forsta may, subject to the Parties’ mutual agreement, provide to Client access to Software features that are not yet deemed production ready by Forsta (“**Limited Availability Features**”). Any use by Client of such activated Limited Availability Features shall be at Client’s sole risk and Forsta shall not, notwithstanding anything to the contrary in this Agreement, have any responsibility for the consequences of the use thereof.

### 6. REGULATIONS OF USE OF THE FORSTA MATERIALS

- 6.1. With the exception of Contractors, Client and Client’s Affiliates are not permitted to grant a User ID to their customers, or to any other third party, nor permit them to use a User ID to access the Service. Contractors’ access to and use of the Service shall be restricted to the performance of activities which Client or Client’s Affiliate has engaged Contractor to perform for it. Contractors are not allowed to use the Forsta Materials to perform work on their own behalf or on behalf of any other party.
- 6.2. Client shall be bound by, and shall ensure that all Designated Users (whether Client’s, or its Affiliates or Contractors) use the Software solely as described in the Documentation, and comply with the AUP applicable to the Service as set forth in the Documentation or on Forsta’s website. The AUP is incorporated into this Agreement by reference.
- 6.3. In using the Forsta Materials, Client shall comply, and will ensure that its Affiliates and Personnel comply, with (a) the terms of this Agreement, and (b) applicable laws and regulations (including, as applicable, federal, state, and local laws, rules, and regulations), including those governing the collection, processing, and dissemination of data and the sending of email and other electronic or digital communications and messages. Client shall not, and will ensure that its Affiliates and Personnel shall not, use the Service for any illegal purpose or in any unlawful manner or in a manner that can be reasonably anticipated to interfere with any third party’s use of the Service.
- 6.4. Except to the extent expressly permitted by applicable law or this Agreement, Client shall not, and will ensure that its Affiliates and Personnel shall not: (i) download, copy, modify, prepare translations, or create derivative works of the Forsta Materials, in whole or in part; (ii) decompile, revise, reverse engineer, disassemble, decode, adapt, or derive source code from the Software or any other software provided as part of the Service, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iii) distribute, license, sublicense, rent, lease, lend, sell or otherwise commercially exploit or make available the Forsta Materials; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any IPR or other right of any Person, or that violates any applicable law. Client may only integrate external applications with the Software by utilizing Forsta’s application programming interfaces (“**APIs**”)

available at that time, offered as an Add-On subject to separate terms and conditions.

- 6.5. Client shall not release, publish, or otherwise make available to any third-party the results of any performance, functional, or security evaluation of the Software or the Service without the prior written approval of Forsta.
- 6.6. Client shall not provide any Person that is in the business of developing data collection or reporting software with access to the Forsta Materials.
- 6.7. Forsta may, directly or indirectly, and by use of its disabling methods or any other lawful means, suspend, terminate, or otherwise deny Client's, its Affiliates', Contractors', any Designated User's access to or use of all or any part of the Service or Forsta Materials, without incurring any resulting obligation or liability, if: (a) Forsta receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Forsta to do so; or (b) Forsta believes, in its good faith and reasonable discretion, that: (i) Client, its Affiliates, Contractors, or any Designated User has failed to comply with any term of this Agreement, or accessed or used the Service beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Client, its Affiliates, Contractors, or any Designated User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with the Service; or (iii) this Agreement expires or is terminated. This Section 6.7 does not limit any of Forsta's other rights or remedies, whether at law, in equity, or under this Agreement.

## 7. SUPPORT

- 7.1. Terms regarding support, support hours, Client support administration, hosting, Service Enhancements, Additional Services, travel expenses, and training are set out in Schedule 4.

## 8. FEES, CHARGES, PRICING, & PAYMENT

- 8.1. Terms regarding fees, charges, pricing, and payment are set out in Schedule 2.

## 9. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 9.1. Client recognizes, acknowledges, and agrees that the Forsta Materials are a valuable asset of Forsta and the parties from which Forsta derives its rights to the Forsta Materials (jointly, the "Owners"), developed by the expenditure of considerable work, time, and money, and Client acknowledges that it has no proprietary interest therein. The Owners hold all IPR relating to the Forsta Materials. This Agreement grants to Client only the rights expressly granted to Client to access the Service and use the Software and the Documentation within the limits of and subject to the restrictions established by this Agreement. All other rights in the Forsta Materials, including all IPR, shall remain with the Owners.
- 9.2. Forsta shall make no claim to either the title to or IPR in, Client Materials.
- 9.3. Client grants Forsta, its Affiliates and third-party suppliers a nonexclusive, worldwide, royalty-free, and fully paid license to use, reproduce, distribute, digitally display, and otherwise use the Client Materials, during the Term of this Agreement, to the extent necessary or useful to them to provide Client with services under this Agreement, to perform their respective obligations hereunder and to enforce this Agreement.
- 9.4. Client shall not, and will ensure that its Affiliates and Contractors shall not, remove, obscure, suppress, or modify any proprietary marking, including any trademark or copyright notice, logo, or branding, appearing in the Forsta Materials, and shall incorporate all such proprietary markings in any copy of the Documentation which the Client or any Client's Affiliates make in accordance with this Agreement. Subject to Section 9.5 below, the restrictions in this Section 9.4 shall not apply to changes Client is allowed to make as set forth in the Documentation.
- 9.5. Client shall, and will ensure that its Affiliates and Contractors shall, include an attribution stating "Powered by Forsta" in all interview templates. Any attribution made by Client, its Affiliates, or Contractors shall not infer that Client, its Affiliates, Contractors, or any third-party owns or states any claim to the IPR in the Forsta Materials.
- 9.6. Forsta may, at its sole discretion use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback, or recommendation provided by Client, its Affiliates, or Contractors relating to Forsta Materials ("Client Ideas"), provided that such Client Ideas do not contain any Confidential Information of Client or any Client's Affiliates.
- 9.7. Client and its Affiliates shall promptly notify Forsta if Client or its Affiliates become aware of unauthorized access to, use of, or copying of the Forsta Materials or any other breach or violation of any of the terms of this Agreement.

## 10. REPRESENTATIONS AND WARRANTIES

- 10.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:
  - 10.1.1. it is duly organized, validly existing, and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
  - 10.1.2. it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;
  - 10.1.3. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
  - 10.1.4. when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such party in accordance with its terms.
  - 10.1.5. it will, at its own expense, comply with all laws, regulations, and other legal requirements that apply to such Party and to its role under this Agreement, including laws relating to IPR, the right to privacy, and defamation.
- 10.2. Additional Client's Representations, Warranties and Covenants. Client represents, warrants and covenants that:
  - 10.2.1. will only provide lawful instructions to Forsta in relation to its use of the Service and to the processing of Client Materials.

- 10.2.2. it owns or otherwise has and will have the necessary rights and consents in and relating to the Client Materials so that, as received by Forsta and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any IPR, or any privacy or other rights of any third party or violate any applicable Law.
- 10.2.3. (i) where consent is required by applicable law and emails are being sent to individuals who are not Client's Personnel, it has obtained consent to send emails to those individuals via the Service; (ii) it shall promptly and thoroughly respond to any request or complaint in relation to emails sent via the Service; and (iii) it shall process opt-out and unsubscribe requests from email recipients and promptly cease contacting them.

#### **11. LIMITED WARRANTIES. EXCLUSIVE REMEDIES.**

- 11.1. Forsta warrants that (i) the Software and Service will perform during the Term substantially in accordance with the specifications set forth in the applicable Documentation at any time; (ii) it shall provide the Service as defined in the Service Level Agreement; (iii) any Additional Services provided under this Agreement will be performed using Personnel of required skill, experience and qualifications and in a professional and workmanlike manner and in accordance with generally accepted industry practices and performance standards; and (iv) the Service shall not cause or occasion the introduction of Malicious Code to Client provided that Forsta shall not be liable in circumstances where: (x) Client, Client Affiliates, or Contractors introduce or contribute to the introduction of Malicious Code into the Service; or (y) the introduction of Malicious Code could not have been prevented notwithstanding Forsta's timely deployment of industry standard anti-virus software, such as in the instance of zero day vulnerabilities ("**The Limited Warranty**"). In the event of a breach of the Limited Warranty, Client's and Client Affiliates' sole remedy and Forsta's sole obligation is that Forsta shall make commercially reasonable efforts to restore the Service to the contracted level; provided Forsta receives written notice from Client, invoking the breach of the Limited Warranty, as provided in Section 11.2, below. If Forsta is unable to restore the Service within a reasonable time or at a reasonable cost, either Forsta or Client may terminate this Agreement in writing, and in such case Forsta will refund a pro rata share of the unused portion of the Access and Use Fees Client has pre-paid to Forsta under this Agreement and with no continuing obligation for the fees owed thereafter in the event of a multi-year Term.
- 11.2. As a condition for invoking the Limited Warranty, Client must give Forsta written notice of the failure, error, or malfunction Client complains of as soon as practical after it comes to Client's attention. Furthermore, Client will make commercially reasonable efforts to deliver to Forsta a detailed written explanation of how to reproduce the alleged breach of the Limited Warranty. Client understands that if Client does not provide such explanation, Forsta may not be able to address the issue.
- 11.3. **DISCLAIMER OF WARRANTIES. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE 11, THE FORSTA MATERIALS ARE 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 FORSTA MATERIALS, 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, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, FORSTA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR FORSTA MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, OR ERROR FREE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY FORSTA OR ITS PERSONNEL OR REPRESENTATIVES WILL CREATE ANY WARRANTY, AND THIS WARRANTY DISCLAIMER SUPERSEDES ANY SUCH INFORMATION. CLIENT ACKNOWLEDGES AND AGREES IT HAS SELECTED THE SERVICE AND IS SOLELY RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE SERVICE AND HAS NOT AND SHALL NOT RELY UPON ANY REPRESENTATIONS OR WARRANTIES AS TO THE SUITABILITY OR UTILITY OF THE SERVICE TO MEET CLIENT'S NEEDS OR REQUIREMENTS. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.**
- 11.4. Notwithstanding anything to the contrary contained in this Agreement, and without limiting the generality of Section 11.1 above, and Article 12, below, Forsta, and any of its licensors, third-party suppliers, or service providers, shall not be liable towards Client, its Affiliates, Contractors, or any other Person, or be deemed to be in breach of its representations, warranties, covenants or indemnification obligations:
  - 11.4.1. for any failures, errors, and malfunctions caused in whole or in significant part by:
    - 11.4.1.1. Client's or any of Client its Affiliates' or Contractors': (i) operation of the Software and Service in a manner not anticipated by the Documentation; (ii) non-compliance with any of the terms of this Agreement to the extent such non-compliance affects Forsta's Service performance; (iii) use of the Service in combination with software, hardware, system, network, facility, or other matter, or equipment not expressly approved by Forsta via the Documentation or in a support ticket; or (iv) any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement;

- 11.4.1.2. subject to Section 5.2, the access to or operation of the Service by someone who is not a Designated User where such access has been occasioned or permitted by Client or any of its Affiliates or any Contractor; or
- 11.4.1.3. the failure of Client's or any of its Affiliates' or Contractors' internal systems to meet the system requirements (as per Schedule 1) in effect at the time of occurrence;
- 11.4.1.4. issues due to general internet latency and connection loss, or issues related to Client's inadequate bandwidth, insufficient network, or similar;
- 11.4.1.5. any data system failures or damage to Client's or any of its Affiliates' or Contractors' internal systems as a result of interaction between the Software and such internal systems, unless the failure or damage is clearly the result of a defect in the Software or a malfunctioning of the Service for which Client has not been pre-warned in writing by Forsta;
- 11.4.1.6. Force Majeure events;
- 11.4.1.7. Scheduled Maintenance; or
- 11.4.1.8. disabling, suspension, or termination of the Services pursuant to Section 6.7.

11.4.2. to the extent that Forsta's proper fulfillment of any Client's instructions should constitute a breach by Forsta of this Agreement or of any applicable law, order, ordinance, regulation, or similar legal process; provided however Forsta shall remain liable towards Client to the extent Forsta has not complied with obligations applicable to it under applicable laws or where Forsta has acted outside or contrary to lawful instructions of Client.

## **12. LIMITATION OF LIABILITY**

### **FOR AGREEMENTS GOVERNED BY THE LAWS OF THE UNITED STATES (SEE SECTION 22.1), THE FOLLOWING APPLIES:**

- 12.1. TO THE FULLEST EXTENT ALLOWED BY LAW, FORSTA, AND ANY OF ITS LICENSORS, THIRD-PARTY SUPPLIERS, OR SERVICE PROVIDERS SHALL NOT UNDER ANY CIRCUMSTANCES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM, BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING UNDER ANY DOCUMENT INCORPORATED HEREIN BY REFERENCE, THE SUBJECT MATTER HEREOF, OR THEREOF, OR THE FORSTA MATERIALS, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (a) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES HOWSOEVER CHARACTERIZED (b) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFITS OR DIMINUTION IN VALUE, (c) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (d) WASTED ADMINISTRATIVE TIME, (e) COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, (f) DAMAGES OR LOSSES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION, LOSS, DAMAGE, CORRUPTION, RECOVERY OR DELETION OF TRANSIENT DATA, OR DELAYS IN OPERATION OR TRANSMISSION; OR (g) DEPLETION OR LOSS OF GOODWILL OR REPUTATION; IN EACH CASE (a) THROUGH (g) REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 12.2. IN THE EVENT OF ANY BREACH BY EITHER PARTY OF THIS AGREEMENT, WITH THE EXCEPTION OF BREACHES OF SUB-SECTION 10.1.5; ARTICLE 13: "INDEMNIFICATION"; OR ARTICLE 14: "CONFIDENTIAL INFORMATION", IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE BREACHING PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE TOTAL AMOUNT INVOICED BY FORSTA TO CLIENT DURING THE PRECEDING TWELVE (12) MONTH PERIOD, PRECEDING THE EVENT GIVING RISE TO THE CLAIM, EXCLUDING SALES TAX.
- 12.3. EXCEPT AS SET FORTH IN THIS ARTICLE, 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 ITS ESSENTIAL PURPOSE.

### **FOR AGREEMENTS GOVERNED BY THE LAWS OF ENGLAND, CANADA, GERMANY, SWEDEN, BOSNIA & HERZEGOVINA, OR NORWAY (SEE SECTION 22.1) THE FOLLOWING APPLIES:**

- 12.1 NEITHER PARTY'S LIABILITY: (a) FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS PERSONNEL; (b) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (c) TO PAY AMOUNTS PROPERLY DUE AND OWING UNDER THIS AGREEMENT; OR (d) 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.

- 12.2 SUBJECT TO SECTION 12.1, NEITHER PARTY, NOR IN CASE OF FORSTA, ANY OF ITS LICENSORS, THIRD-PARTY SUPPLIERS, OR SERVICE PROVIDERS, SHALL BE LIABLE (WHETHER FOR BREACH OF CONTRACT, IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION, OR FOR ANY OTHER REASON FOR ANY: (a) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES HOWSOEVER CHARACTERIZED (b) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFITS OR DIMINUTION IN VALUE, (c) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (d) WASTED ADMINISTRATIVE TIME, (e) COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, (f) DAMAGES OR LOSSES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION, LOSS, DAMAGE, CORRUPTION, RECOVERY OR DELETION OF TRANSIENT DATA, OR DELAYS IN OPERATION OR TRANSMISSION; OR (g) DEPLETION OR LOSS OF GOODWILL OR REPUTATION.
- 12.3 SUBJECT TO SECTIONS 12.1 AND 12.2 AND WITH THE EXCEPTION OF: (a) ANY BREACH OF SUB-SECTION 10.1.5; (b) ANY LIABILITY UNDER ARTICLE 13: "INDEMNIFICATION"; OR (c) ARTICLE 14: "CONFIDENTIAL INFORMATION", EACH PARTY'S TOTAL 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 IN AGGREGATE FOR ALL CLAIMS ARISING DURING THE TERM TO AN AMOUNT EQUAL TO ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE TOTAL AMOUNT INVOICED BY FORSTA TO CLIENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, EXCLUDING SALES TAX. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- FOR AGREEMENTS GOVERNED BY AUSTRALIAN LAW (SEE SECTION 22.1) THE FOLLOWING APPLIES:**
- 12.1 NEITHER PARTY'S LIABILITY: (a) FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS PERSONNEL; (b) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (c) TO PAY AMOUNTS PROPERLY DUE AND OWING UNDER THIS AGREEMENT; OR (d) 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.
- 12.2 SUBJECT TO SECTIONS 12.1, 12.3, AND 12.4, NEITHER PARTY, NOR IN CASE OF FORSTA, ANY OF ITS LICENSORS, THIRD-PARTY SUPPLIERS, OR SERVICE PROVIDERS, SHALL BE LIABLE (WHETHER FOR BREACH OF CONTRACT, IN TORT (INCLUDING FOR NEGLIGENCE), OR FOR ANY OTHER REASON) FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY: (a) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OR LOSSES HOWSOEVER CHARACTERIZED (b) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFITS OR DIMINUTION IN VALUE, (c) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (d) WASTED ADMINISTRATIVE TIME, (e) COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, (f) DAMAGES OR LOSSES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION, LOSS, DAMAGE, CORRUPTION, RECOVERY OR DELETION OF TRANSIENT DATA, OR DELAYS IN OPERATION OR TRANSMISSION; OR (g) DEPLETION OR LOSS OF GOODWILL OR REPUTATION.
- 12.3 WITHOUT LIMITING SECTION 12.1(d), UNDER AUSTRALIAN CONSUMER LAW (THE "ACL"), CONSUMERS HAVE CERTAIN RIGHTS WHICH CANNOT BE EXCLUDED, INCLUDING GUARANTEES AS TO THE ACCEPTABLE QUALITY AND FITNESS FOR PURPOSE OF GOODS AND SERVICES. NOTHING IN THIS AGREEMENT WILL BE READ OR APPLIED SO AS TO EXCLUDE, RESTRICT, OR MODIFY OR HAVE THE EFFECT OF EXCLUDING, RESTRICTING, OR MODIFYING ANY CONDITION, WARRANTY, GUARANTEE, RIGHT, OR REMEDY IMPLIED BY THE ACL AND WHICH BY LAW CANNOT BE EXCLUDED, RESTRICTED, OR MODIFIED, EVEN IF ANY OTHER TERM OF THIS AGREEMENT WOULD OTHERWISE SUGGEST THAT THIS MIGHT BE THE CASE.
- 12.4 SUBJECT TO SECTION 12.3 AND TO THE EXTENT PROVIDED BY LAW, IF FORSTA FAILS TO COMPLY WITH A STATUTORY GUARANTEE WHICH BY LAW CANNOT BE EXCLUDED THEN TO THE EXTENT THE LAW PERMITS IT TO LIMIT ITS LIABILITY IN RESPECT OF SUCH FAILURE ITS LIABILITY IS LIMITED TO: (a) IN THE CASE OF GOODS, THE REPLACEMENT OR REPAIR OF THE GOODS OR SUPPLY OF EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPLACED OR REPAIRED OR THE COST OF ACQUIRING EQUIVALENT GOODS; AND (b) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN, OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- 12.5 SUBJECT TO SECTIONS 12.1 AND 12.2, AND WITH THE EXCEPTION OF: (a) ANY BREACH OF SECTION 10.1.5 ; OR (b) ANY LIABILITY UNDER ARTICLE 13: "INDEMNIFICATION"; OR (c) ANY LIABILITY UNDER ARTICLE 14: "CONFIDENTIAL INFORMATION"; OR (d) ANY LIABILITY REFERRED TO IN SECTIONS 12.3 AND 12.4, TO THE EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL 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, IN AGGREGATE FOR ALL CLAIMS ARISING DURING THE TERM TO AN AMOUNT EQUAL TO ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE TOTAL AMOUNT INVOICED BY FORSTA TO CLIENT DURING THE TWELVE (12) MONTH PERIOD, PRECEDING THE EVENT GIVING RISE TO THE CLAIM, EXCLUDING SALES TAX. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### 13. INDEMNIFICATION

- 13.1 Client shall indemnify, defend and hold harmless Forsta, its Affiliates, contractors and third-party suppliers, and each of its and their respective officers, directors, employees, agents, permitted successors, and permitted assigns (each, a “Forsta Indemnitee”) from and against, all Losses suffered or incurred by it or them as a result of any third-party claim (other than a claim of an Affiliate of a Forsta Indemnitee) arising out of or related to
- 13.1.1. Client Materials, including any processing of Client Materials by or on behalf of Forsta in accordance with this Agreement;
  - 13.1.2. Forsta’s use of any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Designated User;
  - 13.1.3. Forsta’s compliance with any specifications or directions provided by or on behalf of Client or any Designated User;
  - 13.1.4. Client’s alleged breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
  - 13.1.5. any gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Client or any Designated User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.
- 13.2 Forsta shall indemnify, defend and hold harmless Client and Client Affiliates, and their respective officers, directors, employees, agents, permitted successors, and permitted assigns (each, a “Client Indemnitee”) from and against all Losses suffered or incurred by it or them as a result of any third-party claim (other than a claim of an Affiliate of a Client indemnitee) that Client’s or any Client Affiliates’ Designated Users’ access to or use of the Forsta Materials, in accordance with the terms of this Agreement, infringes any IPR in Australia, New Zealand, Canada, the United States, or any country belonging to the European Economic Area. Notwithstanding anything to the contrary herein, Forsta will have no obligation under this Section or otherwise with respect to any infringement claim based upon:
- 13.2.1. any Client Materials or third-party materials;
  - 13.2.2. access to or use of the Forsta Materials in combination with any hardware, system, software, network, or other materials or service not provided by Forsta or specified for Client’s use in the Documentation;
  - 13.2.3. modification of the Forsta Materials other than: (i) by or on behalf of Forsta; or (ii) with Forsta’s written approval in accordance with Forsta’s written specification;
  - 13.2.4. act, omission, or other matter described in Sub-Sections 13.1.1 through 13.1.4., above, whether or not the same results in any claim against or Losses by any Forsta Indemnitee.
- 13.3 The indemnification obligations contained in this Article 13 are subject to the party requesting indemnification (the “**Indemnified Party**”):
- 13.3.1. promptly notifying the other party (the “**Indemnifying Party**”) of any claim or litigation that is subject to such indemnification obligation;
  - 13.3.2. not making any admission or statement or taking any action that will cause an increase to the Indemnified Party’s liability; and
  - 13.3.3. permitting the Indemnifying Party, at its election, to control the defense or settlement of any such claim or litigation, provided always that no settlement may be made by Indemnifying Party that involves an admission of liability on the part of the Indemnified Party without such Indemnified Party’s prior written consent, which shall not be unreasonably withheld or delayed. The Indemnified Party 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.
- 13.4. 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 Forsta Materials, Forsta may at its own expense:
- 13.4.1. obtain for Client the right to continue using the Forsta Materials; or
  - 13.4.2. modify or replace the Forsta Materials so as to avoid infringement; or
  - 13.4.3. in the event Forsta is unable to offer either remedy set out in Sub-Sections 13.4.1 or 13.4.2 at a reasonable cost and within a reasonable time, Forsta may terminate this Agreement and reimburse Client a pro rata share of the unused portion of the Access and Use Fees Client has pre-paid to Forsta under this Agreement and with no continuing obligation for fees owed thereafter in the event of a multi-year Term.
- 13.5. Client’s sole remedy and Forsta’s sole liability and obligation with respect to the infringement or alleged infringement of any third-party IPR of any kind whatever by the Forsta Materials.

### 14. CONFIDENTIAL INFORMATION

14.1. Terms regarding mutual confidentiality are set out in Schedule 6.

## 15. FORCE MAJEURE

15.1. 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 Force Majeure events. However, in the event that a Party's delay in performance or failure to perform due to such Force Majeure events has continued for four (4) weeks or more, the other Party may terminate the Agreement upon ten (10) days' written notice.

## 16. PERMITTED PURPOSES

16.1. Forsta has the right to monitor and store a record of Service activities in order to maintain uptime and security, to perform support and troubleshooting, for billing purposes, to confirm Client's compliance with the terms of this Agreement, and as otherwise necessary for Forsta to perform under the terms of this Agreement (jointly, the "Permitted Purposes"). Such record of Service activities shall not be used for other than Permitted Purposes.

16.2. Forsta Personnel may access and process Personal Data only for Permitted Purposes, and always in accordance with Section 17.2 below.

## 17. DATA PROTECTION, SUBCONTRACTORS, DATA BREACH NOTIFICATION

17.1. The Parties acknowledge and agree that (i) Client will be and remain the controller of the Client Materials for purposes of applicable laws relating to data privacy, Personal Data, transborder data flow, and data protection; (ii) Client is the party instructing Forsta in relation to the use of Client Materials for activities including emailing, data collection, and reporting; (iii) Forsta shall be processing Client Materials on Client's behalf; and that (iv) Client determines the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects. Forsta consequently:

- 17.1.1. does not participate in Client's or Client Affiliates' or Contractors' selection of the individuals targeted by e-mails or questionnaires or individuals to whom data or access to reports is provided;
- 17.1.2. does not influence or control the type of data and information gathered from individuals or the content of the material displayed to individuals; and
- 17.1.3. does not influence or control the use and distribution of the data and information collected or inputted by Client or Client Affiliates or Contractors.

### 17.2. Forsta:

- 17.2.1. maintains, and shall ensure that any third-party supplier maintains, appropriate technical and organizational processes to protect: (i) against unauthorized access to such Personal Data; and (ii) against accidental loss or destruction of or damage to such Personal Data held or processed by it at all times in accordance with generally accepted industry practice;
- 17.2.2. undertakes, and shall ensure that any third-party supplier undertakes, to act only on the instructions of Client or any Client Affiliate or Contractors or as otherwise reasonably necessary for performance of services under this Agreement in relation to the processing of such Personal Data;
- 17.2.3. is hereby authorized by Client to use, subject to Sub-Section 17.2.5, third-party suppliers to manage the SaaS Hosting Environment, as of the Effective Date being Rackspace Inc. (US), Rackspace Ltd. (UK), Rackspace Pty. (Australia), and Rackspace affiliates;
- 17.2.4. will, where Personal Data is to be processed by third-parties other than Affiliates or other than the third-party suppliers set forth in Sub-Section 17.2.3 above, obtain Client's prior written approval;
- 17.2.5. shall, where it initiates the transfer of Personal Data from the EU/EEA for processing outside of the EU/EEA, have in place with the entities in Sub-Sections 17.2.3 and 17.2.4., as well as with Forsta Affiliates, standard contractual clauses adopted by the EU Commission pursuant to GDPR article 46 (2) c), or other EU approved basis for transfer of Personal Data to third countries;
- 17.2.6. undertakes to inform Client in writing no later than sixty (60) days in advance of replacement of third-party suppliers under Sub-Section 17.2.3 or change of location of the SaaS Hosting Environment, and thirty (30) days in advance for replacement of third-party suppliers under Sub-Section 17.2.4. If Client objects to such replacement, Client shall without undue delay, but no later than within fifteen (15) days of its receipt of the information, notify Forsta thereof in writing and include explanation of the grounds of its objection. Client shall not object to changes required under applicable law. The Parties undertake to discuss in good faith possible adjustments with the aim of enabling Client to approve the replacement. Should the Parties not be able to reach mutual agreement within either fifteen (15) days of Forsta's receipt of Client's notice or within the time when the intended changes are to be implemented, Client may without penalty terminate, upon written notice, the part(s) of the Sales Orders affected by such objection. In the event of any termination under this Sub-Section 17.2.6 Forsta will, as Client's sole and exclusive remedy, refund the pro rata share of the unused portion of the Access and Use Fees Client has pre-paid to Forsta under the applicable Sales Order and with no continuing obligation for fees owed thereafter in the event of a multi-year Term, as applicable;
- 17.2.7. will have in place with any third-party suppliers to which Forsta discloses any Personal Data for the purposes of carrying out Forsta's obligations under this Agreement contractual confidentiality and data protection terms equivalent in scope to those set forth in this Agreement and will remain responsible for the acts and omissions of such third-party suppliers under the terms of this Agreement;
- 17.2.8. will ensure that Forsta's own Personnel authorized by it to process Personal Data under this Agreement have (i)

- undergone security training appropriate to their roles, and (ii) have committed to confidentiality and data protection terms equivalent in scope to those set forth in this Agreement;
- 17.2.9. will not disclose to any third-party, other than to Forsta's own Personnel, any Personal Data which comes to its knowledge or possession under or in respect to this Agreement, save as permitted under the terms of the Agreement, and save as Forsta is compelled to disclose by order of a court or other body having similar authority or pursuant to governmental or other regulations;
- 17.2.10. subject to Sections 7.2 and 7.3 of Schedule 6, and except as reasonably required for the performance of its obligations under the Agreement or as required by law, agrees it will not, and shall ensure that any third-party supplier responsible for the SaaS Hosting Environment will not, retain any copy, abstract, précis, or summaries of any such Personal Data beyond the Term;
- 17.2.11. shall make reasonable efforts to provide Client with information necessary to assist Client in Client's efforts to comply with applicable data protection legislation and for Client to respond to inquiries from data protection authorities and Respondents. Forsta shall upon Client's request and at no cost to Client provide Client with (i) Forsta's standard security documentation; (ii) available reports of internal or third-party performed application and vulnerability scans of the Service; (iii) records of processing activities and (iv) respond to follow-up questions in relation to the foregoing. Any assistance beyond the foregoing, such as but not limited to Forsta's provision of assistance to Client in relation to Client's security audits and reviews, notification obligations, data protection impacts assessments, consultation with data protection authorities and exercise of Respondent rights pursuant to applicable law, shall be subject to terms and costs to be agreed mutually in writing between the Parties;
- 17.2.12. shall, upon receipt of a request from a data subject (a "DSAR") invoking rights under applicable laws to its Personal Data held by Client, inform Client of the DSAR within five (5) business days and provide relevant information reasonably requested by Client. Assistance under this clause 17.2.12 may be chargeable to the extent Client is able to address the DSAR at its own initiative by using the Service or other tools and software provided to it under this Agreement; and
- 17.2.13. shall without undue delay upon becoming aware notify Client of any data breach related to Personal Data where the aforementioned results or is likely to result in accidental, unlawful or unauthorized access or modification to, or use or disclosure of, Personal Data, except to the extent the data breach is unlikely to result in a risk to the rights and freedoms of natural persons impacted by it. To the extent the data breach is the responsibility of Forsta, Forsta shall at no cost to Client provide assistance to reasonably support Client's efforts to comply with applicable data breach requirements under applicable laws and regulations.
- 17.3. Client:
- 17.3.1. undertakes that it (i) has sufficient legal basis to process Personal Data, including sufficient legal basis to instruct Forsta to process Personal Data; (ii) is responsible for the accuracy integrity, content, reliability, and legality of the Personal Data; (iii) complies with applicable laws on notification to and authorization from relevant data protection authorities; and (iv) informs Respondents where required in accordance with applicable law;
- 17.3.2. shall document its instructions to Forsta in writing whereas Client's self-service use of the Service shall be deemed to be documented instructions;
- 17.3.3. shall promptly address all matters related to privacy, data protection, DSARs, spam, and similar issues which are brought to Client's attention by data subjects, third parties or by Forsta and arising out of Client's use of the Service; and
- 17.3.4. understands and agrees that, notwithstanding anything to the contrary in the Agreement, proper data protection is also contingent on Client (i) ensuring that all of its Designated Users take all appropriate legal, organizational, and technical measures to protect Client's Personal Data, keeping in mind the nature of such data; and (ii) utilize at their own initiative the security features available in the Service.

## 18. TERMINATION RIGHTS

- 18.1. 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 such other Party shall have failed to remedy that breach within fifteen (15) days after receiving written notice requiring it to do so.
- 18.2. Client shall be deemed to be in material breach if, without limitation, Client:
- 18.2.1. grants or occasions any individuals, other than Designated Users or those allowed under Article 5, to access to or use of the Service; or
- 18.2.2. uses or permits the use of the Service in breach of the terms of this Agreement; or
- 18.2.3. fails to pay Uncontested Invoices in a timely manner in accordance with Schedule 2, Article 3 and thereafter fails to cure the payment default within ten (10) business days after Client receives written notice of the default from Forsta; or
- 18.2.4. misappropriates the Forsta IPR.
- 18.3. Either Party may terminate the Agreement on written notice, effective immediately, if the other Party becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up, or other similar process, or has any distress, execution, or other process levied or enforced against the whole or a substantial part of its assets, which is not discharged, paid out, withdrawn or removed within twenty eight (28) days,

or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.

- 18.4. The termination or expiration of the Agreement shall terminate all of the rights of Client, Client Affiliates, and Contractors to use the Forsta Materials but shall be without prejudice to the rights and obligations of each Party which may have accrued before the date of termination or expiration. Without limiting the generality of the foregoing, if Forsta terminates this Agreement pursuant to Section 18.1 or Section 18.3, all fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such fees, together with all previously-accrued but not yet paid fees, on receipt of Forsta's invoice therefor.
- 18.5. The termination or expiration of this Agreement will not affect the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after termination or expiration. Without prejudice to the foregoing, Articles 9, 12, 13, 14, 19, 22, 23 and 24 shall survive termination or expiration of this Agreement.

**19. NON-SOLICITATION**

- 19.1. During the Term and for one (1) year after, Client shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior twelve (12) months employed or engaged by Forsta or any Forsta's subcontractor. In the event of a violation of this Section 19.1, Forsta will be entitled to liquidated damages equal to the compensation paid by Forsta to the applicable Person during the prior twelve (12) months.

**20. TAXES**

- 20.1. Client agrees to pay all sales (including value added tax), use, ad valorem, personal property, or general intangibles tax 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.
- 20.2. Client shall not deduct from payments to Forsta any taxes paid or payable to third parties, however designated, unless required to do so by applicable law, in which event Client shall promptly provide to Forsta the documentation related to Client's payment of such taxes sufficient to enable Forsta to make a valid claim for the repayment of such sums from said third-party.

**21. ASSIGNMENT**

- 21.1. Neither Party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this agreement without the other's consent to (a) an Affiliate; or (b) to any Person which succeeds to the business of either Party by acquisition, merger, reorganization, or otherwise; upon prior written notice and provided such Person: i) is not a direct competitor of the non-assigning Party; ii) has the financial viability to perform the respective obligations under this Agreement; and (iii) agrees in writing to be bound by, and subject to, this Agreement.
- 21.2. The right to receive payments under this Agreement may be freely assigned by Forsta to any third-party for purposes of debt collection.
- 21.3. Any assignment or delegation, or attempted assignment or delegation contrary to the terms of this Article will be a material breach of this Agreement and shall be null and void. This Agreement will be binding upon the successors, legal representatives and permitted assigns of the Parties.

**22. GOVERNING LAW**

- 22.1. 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, one of the following based on the Forsta Entity entering into this Agreement as stated in the Sales Order:

Confirmit AS	Norway.
Confirmit Ltd or FV Europe LTD	England and Wales.
Confirmit, Inc.	The State of New York not including its choice of law provisions.
FocusVision Worldwide, Inc.	The State of California not including its choice of law provisions.
Confirmit Australia Pty Ltd.	New South Wales, Australia.
Confirmit Solutions Inc.	British Columbia, Canada.
Dapresy D.O.O.	Bosnia & Herzegovina.
Dapresy AB	Sweden.
Dapresy Deutschland GmbH	Germany.

- 22.2. THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

**23. NOTICES**

- 23.1. Notices required under this Agreement shall be in writing and addressed to the relevant Party at its address as indicated on the first page of this Agreement or as later updated in writing by such Party. Notices sent in accordance with Article 22 hereof, shall be sent by reputable national overnight courier service or reputable international courier service, in each case signature required and charges pre-paid, and will be deemed effectively given when received. A copy of all notices given under this Article 22 shall also be sent to the Parties respective email addresses as follows:

If to Forsta: [legal@confirmit.com](mailto:legal@confirmit.com)

If to Client, at the Accounting Email listed in the Sales Order.

23.2. Any communication between the Parties with regard to this Agreement, including any negotiations, notices, disputes, or legal proceedings, shall be made and held in the English language.

#### **24. MISCELLANEOUS**

- 24.1. For purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- 24.2. 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. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 24.3. This Agreement contains the entire agreement between the Parties relating to its subject matter and supersedes any previous agreement, communication, representation, or promise, whether written or oral. Nothing in this Section 24.3 limits or excludes liability for fraudulent misrepresentation.
- 24.4. 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.
- 24.5. 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, partners, or parties in a joint venture.
- 24.6. The headings of the Articles, Sections, and Sub-Sections of this Agreement are included for convenience and are not to be used in interpreting the Agreement.
- 24.7. By the execution of this Agreement, Client and Forsta agree to cooperate in good faith to produce a press release or a case study, subject always to Client’s prior approval.
- 24.8. The Parties agree that electronic signatures or scanned images of signatures are the same as original signatures and that digital images of this Agreement shall be as valid as an original. 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.
- 24.9. Changes and additions to this Agreement shall only be valid when made in writing and signed by authorized representatives of both Parties.
- 24.10. 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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### **SCHEDULE 1 DOCUMENTATION & SYSTEM REQUIREMENTS**

#### **1. DOCUMENTATION**

- 1.1. Documentation will be made available to Client (a) in a downloadable form from the User Manual section of the Forsta extranet; (b) from relevant User Manual menus in the Software itself; or (c) as delivered by Forsta to Client.
- 1.2. Without prejudice to the last sentence of Section 2.1 of the Terms and Conditions of the Agreement, the Documentation is subject to ongoing changes so to properly reflect the Software version at any time available via the Service, provided however that Designated Users will receive newsletters with information on main changes and improvements to the Software.

#### **2. SYSTEMS REQUIREMENTS**

- 2.1. In order to access and use the SaaS Service, the workstations of Designated Users and of those using Third Party Accesses must comply with the requirements (the "System Requirements") applicable at any time, available at: <http://www.confirmit.com/legal>. The System Requirements are subject to change. Changes in System Requirements will take effect no less than thirty (30) days after information thereof is provided by e-mail to Designated Users. System

Requirements will not reduce limits in place as of the Effective Date, but new limits may be introduced in relation to (i) new features provided to the SaaS Service; (ii) maintaining or improving security; and (iii) updating third party components no longer supported.

- 2.2. Where Client plans to utilize the Software CATI and CAPI components, Client understands and agrees that specific infrastructure and sufficient line and connection capacity must be procured, correctly installed, configured, and maintained, at Client's sole costs, in order for the Software to operate properly.

**SCHEDULE 2  
FEES, CHARGES, PRICING, & PAYMENT**

**1. FEES FOR SOFTWARE**

- 1.1. Client shall pay to Forsta the fees mutually agreed in the applicable Sales Order(s), including:
- 1.1.1. *Access and Use Fees*, payable in advance for each period set forth in the applicable Sales Order.
  - 1.1.2. Fees for *Additional Services*, payable as set forth in the Sales Order.
  - 1.1.3. *Horizons Unit Fees*, payable either in advance of usage or in arrears as agreed in the applicable Sales Order. In the absence of advance payment, Horizons Units are payable monthly in arrears and are calculated by multiplying the number of Horizons Units used during that month by Forsta's standard pay-as-you-go rate, which is a Horizons Unit Fee payable monthly as incurred. The number of Horizons Units to be charged to Client are based on Client's use of the Service functionalities and the values ascribed to the use of each such Service functionality as set forth below:

<b>Service functionality:</b>	<b>Horizons Unit charge:</b>
- Each completed questionnaire (*)	1 Horizons Unit
- Each time a report export (PDF, PPT, Excel, or similar) is <i>generated</i> via the Service or via Third Party Accesses; or - Each time a report available without using Third Party Access (HTML pages or similar web-reports, accessible without e.g. RVAs) is <i>updated</i> (**)	3 Horizons Units

(\*) One (1) Horizons Unit will be charged to Client each time a questionnaire is completed. A questionnaire is completed when: (i) reaching the end of the questionnaire; or (ii) reaching a script entered in the questionnaire by the Designated User which sets the questionnaire status to complete. Respondents re-entering a previously completed questionnaire for purposes such as updating answers will also trigger the Horizons Unit charge, provided however that the Software enables Designated Users to define that a completed questionnaire cannot be re-entered.

(\*\*) Designated Users, and users of Third Party Accesses, can access, view and update reports as many times as they wish without incurring any end user report charges. Charges only apply where (i) exports are generated, but there is no charge for report exports from Active Dashboards, for single page exports or hitlists from Reportal, or for data exports; or (ii) reports are made available without the need for Third Party Access, in which case the charge will incur every time the report is generated or updated independently of number of viewers. If the reports are longer than one hundred (100) pages, the charges are applied for every additional set of up to one hundred (100) pages. Note that Designated Users are the only ones able to generate PDFs, PPTs, or other reports, unless they specifically permit those utilizing Third Party Accesses to do so.

- 1.1.3.1. When the number of pre-paid Horizons Units has been used, then Client shall either purchase additional Horizons Units in advance, or with respect to Horizons Units they will be charged at the relevant pay-as-you-go rate for all subsequent usage.
- 1.1.3.2. Horizons Units must be utilized within the specific license period during which they are purchased. Unused prepaid Horizons Units shall not carry over to subsequent Term Extensions.
- 1.1.3.3. Horizons Units are priced in steps according to the quantity bought in each individual purchase.
- 1.1.4. Fees for Storage. Client is granted the following data storage levels for the following areas of the Service: (i) 5GB Respondent Image Upload Storage; (ii) 10GB SmartHub Storage; and (iii) 10GB Survey Data Storage (collected and uploaded text and data) across Client's survey and archive databases. Client should verify utilized storage via the Software or logs provided to Client by Forsta and regularly delete data and files so to reduce storage utilized. Whenever Client's allocated storage levels are exceeded, Forsta shall inform Client thereof by e-mail to Client's business contact, and Client shall within fifteen (15) days delete data so to ensure that its storage utilization falls within the allocated storage levels. As an alternative to deleting data, Client shall have the option to sign up for additional storage for the remainder of the then applicable license period at the applicable fees. Affiliates who access and use the Service under the Agreement without paying their own yearly base license for the Service are not granted additional data storage levels to those stated herein and shall utilize the same data storage levels granted to the Client.

**2. PRICE CHANGES**

- 2.1. Price increases may only take effect at the beginning of each Term Extension, provided that Forsta has informed Client in writing via Sales Order, e-mail, or otherwise of the increase no later than forty-five (45) days before the expiration of the

term stated in the Sales Order (“**Initial Term**”) or the then-current Term Extension, as the case may be.

- 2.2. Where Client upon renewal reduces purchased amounts for a product (e.g. Units, User IDs, Third Party Accesses, or similar) compared to a previous purchase, the unit cost of such licensed components may increase. Such unit cost increase shall not be deemed to be a price increase under Section 2.1 above.

### 3. PAYMENT

- 3.1. Access and Use Fees and Horizons Unit Fees are payable in full at the beginning of each one-year period. Subsequent purchases of such elements during any one-year period are invoiced at the time of purchase or otherwise as agreed between the Parties.
- 3.2. Payments shall be made no later than thirty (30) days after receipt by Client of an Uncontested Invoice for the fees and charges in question.
- 3.3. If Client or any Client Affiliates fail to pay an Uncontested Invoice when due, Forsta shall be entitled to late charges at the rate of ten percent (10%) per annum, or, if lower, the highest rate permitted under applicable law, of the unpaid balance from the date the invoice originally came due. Imposition of late charges shall be without prejudice to Forsta’s right to seek other remedies.
- 3.4. If payment of any Uncontested Invoice to Forsta is delayed for more than ten (10) days after a payment reminder having been sent to Client, Forsta reserves the right without prejudice to any other right or remedy and without any liability to Forsta to immediately withhold Support to Client and to suspend parts of or all access to the Service granted hereunder until such payments have been received by Forsta. For clarity, any suspension of Support or access to the Service occasioned by Client’s failure to make correct payment shall not remove Client’s obligation of payment hereunder in respect of such period of suspension, and the suspension shall not cause the last date of the current period of the Agreement to be changed.

### 4. MERGERS AND ACQUISITION

- 4.1. This Article 4 shall apply if during the Term directly or indirectly Client: (i) acquires, merges, or consolidates with or is acquired by, merged, or consolidated into any other entity; or (ii) acquires all or a substantial proportion of the assets of another entity (either of the foregoing an “**M&A Event**”), and such other entity was at the time of the M&A Event an existing licensee of the Forsta Materials (irrespective of version or whether a SaaS or on-premise model) (a “**Relevant Entity**”).
- 4.2. Upon occurrence of an M&A Event, Client shall, subject to Section 4.3 below, be entitled to: (i) permit any Relevant Entity to access and use Forsta Materials subject to the terms of this Agreement; and (ii) use (or permit any of Clients’ Affiliates to use) Forsta Materials on behalf of any such Relevant Entity or the assets of any such Relevant Entity. The agreement and sales orders of the Relevant Entity (the “**Entity Terms**”) shall remain in full force and effect until they terminate or expire in accordance with such Entity Terms.
- 4.3. Where 4.2(i) or (ii) above apply, Client shall pay the following based on the total fees invoiced to the Relevant Entity in respect of the 12-month period immediately preceding the M&A Event (“**Relevant Entity Fees**”): (i) for the first year following the M&A Event, the agreed price for any Forsta Materials used by that Relevant Entity but in any case not less than seventy-five percent (75%) of the Relevant Entity Fees; and (ii) for the second year following the M&A Event, the agreed price for any Forsta Materials used by that Relevant Entity but in any case not less than fifty percent (50%) of the Relevant Entity Fees. By way of example, if the remaining license period under the Entity Terms at the M&A Event is nine (9) months, then fees under the Entity Terms shall remain due for those nine (9) months until the Entity Terms expire; then additionally Client shall pay no less than seventy-five percent (75%) of the Relevant Entity Fees outlined above prorated for three (3) months and then no less than fifty percent (50%) of the Relevant Entity Fees for the next twelve (12) months thereafter.
- 4.4. In exchange for the fees paid by Client in accordance with Sections 4.3 (i) and (ii) Client shall be entitled to request and obtain for the relevant license period Forsta Materials up to that value calculated using the same product price levels as those agreed in the applicable Client Sales Order under this Agreement.

### 5. CPI ADJUSTMENTS

- 5.1. The index to be used in the calculations set forth in Section 2.2 of the Agreement will depend on the denomination selected in the Sales Order and will be:
  - 5.1.1. For NOK, the index will be the KPI Totalindeks published by SSB. The current internet address for this is <http://www.ssb.no/kpi/>.
  - 5.1.2. For GBP, the index will be the All Items Retail Price Index in UK. The current internet address for this is <https://www.ons.gov.uk/economy/inflationandpriceindices>.
  - 5.1.3. For USD, the index will be the United States Department of Labor’s Bureau of Statistics “Consumer Price Index for All Urban Consumers (CPI-U): U. S. city average, all items” currently available from <https://www.bls.gov/charts/consumer-price-index/consumer-price-index-by-category.htm> (e.g., December 2019 Index was 2.3%).
  - 5.1.4. For EURO, the index will be the Harmonized Indices of Consumer Prices (HICPs) for “All Item”, code: “EA: EURO Area”. The current internet address for the HICP All Items is: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=teicp000>  
For AUD, the index will be the All Groups Consumer Price Index as published by the Reserve Bank of Australia currently found at <http://www.rba.gov.au/inflation/measures-cpi.html>.
  - 5.1.5. Where any other denomination is used on the Sales Order, Forsta reserves the right to select and use an

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appropriate publically published index.

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### SCHEDULE 3 HORIZONS SAAS SALES ORDER(S)

**Any applicable Horizons SaaS Sales Orders executed by and between the Parties under this Agreement are incorporated herein by reference**

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### SCHEDULE 4 SUPPORT

#### 1. INTRODUCTION

- 1.1. Forsta's obligation to provide the Support detailed in this Agreement is dependent on the validity of this Agreement. Should the Agreement be terminated for any reason, Forsta's obligation to provide any form of Support will cease automatically on the occurrence of such event.
- 1.2. **Only for Clients utilizing CATI or CAPI:** Further to Section 2.2 in Schedule 1, if Forsta is requested by Client to address an issue which Forsta deems after due investigations to be related to aspects outside of its contractual responsibility such as CATI and CAPI consoles connection issues due to e.g. latency, connection loss, or inadequate or insufficient bandwidth then Client agrees that Forsta may temporarily discontinue its support efforts in the affected area and request that the Client approve, such approval not to be unreasonably withheld, the creation of a report to be prepared by an independent third-party agreeable to both Parties who has experienced in areas such as performance troubleshooting and network optimization. If such third-party report determines that the issues experienced by Client are stemming out of aspects outside Forsta's contractual responsibility under this Agreement, Client will reimburse Forsta for the costs incurred for the report.

#### 2. CLIENT SUPPORT ADMINISTRATION

- 2.1. Client shall designate one primary Support contact (the "**Designated Support Contact**" or "**DSC**") who will act as the conduit for all requests from Client to Forsta relating to matters of use and troubleshooting with respect to the Service. Additional DSCs may be agreed to in Sales Order(s) subject to payment of an annual fee.
- 2.2. Before assuming responsibilities, the DSC(s) must attend training in the use of the Service and the Software as prescribed by Forsta or must possess skills at least at the same level as those having undertaken such training. Client agrees and understands that the Support service shall not serve for educational purposes, and Forsta retains the right to communicate to Client where DSCs appear to necessitate training.
- 2.3. Requests for Support shall only be submitted by the DSC by e-mail to [support@confirmit.com](mailto:support@confirmit.com) or an alternative e-mail address as informed by Forsta. Client shall ensure that individuals other than DSCs do not send requests for Support directly to Forsta. Forsta may however at its own discretion offer Support directly to Designated Users who are not DSCs under the terms for Additional Services. Support requests sent to Forsta from individuals other than DSCs will normally not be handled, and such circumstance shall not constitute a breach of this Agreement by Forsta.
- 2.4. Requests for Support relating to errors or malfunctions will be addressed by Forsta upon Client making reasonable commercial efforts to provide documentary evidence of the errors or malfunctions including copies where applicable of all relevant error messages so that to the extent possible the error in question may be recreated.
- 2.5. Clients are responsible for providing Forsta with up to date contact details for DSCs effective from the first day of the Initial Term and updating such contact details whenever applicable throughout the Term. Such contact details should be sent by e-mail to [support@confirmit.com](mailto:support@confirmit.com) or an alternative e-mail address as informed by Forsta and should comprise the following information: name, address, phone, and e-mail. Failure by Client to provide this information in an accurate manner to Forsta and to update it when appropriate will result in newsletters and other important information not reaching Client, and Forsta shall not be held responsible for such failure of communication.

#### 3. TYPES OF SUPPORT

- 3.1. During the Term of this Agreement, Forsta will offer Client support services, Service Enhancements, and Additional Services (jointly "**Support**") as detailed in this Schedule 4.
- 3.2. **STANDARD SUPPORT**
  - 3.2.1. Subject to the payment of the Access and Use Fees by Client Forsta will during the Term provide Standard Support to Client in response to requests from one Designated Support Contact for no additional charge.
  - 3.2.2. For purposes of this Agreement, the term "**Standard Support**" means explanation and guidance solely in relation to Client's use of the Software such as producing questionnaires and reports, including basic questionnaire layouts, respondent handling, basic skip logics and pre-code masks, basic template preparation, use of standard validations, error code interpretations, and other authoring-related topics. Standard Support is available during Standard Support Hours (as defined in Article 4 below) by e-mail to [support@confirmit.com](mailto:support@confirmit.com) or an alternative e-mail address as informed by Forsta.

- 3.2.3. Assistance outside of Standard Support, including persistent questioning about subjects which should have been known to Client if Client had attended a training course, or where such a request is more by way of consultancy services (e.g. J-script-/HTML-/QSL-assistance, survey layouts, Reportal designs, checking and editing of respondent lists, any programming (in whole or in part) of questionnaires or reports, and quality assurance, such assistance may at Forsta's sole discretion be considered an Additional Service and will then after Client has been informed by Forsta thereof be subject to Forsta's standard rates for the Additional Services or as specified in an Sales Order. More information regarding Additional Services can be found in Sub-Section 3.4.3 of this Schedule 4.
- 3.2.4. Certain Support activities are not included in Standard Support but may be provided as Additional Services upon request at rates established by Forsta or as specified in an Sales Order, such as correction of errors or malfunctions caused in whole or in significant part by:
  - 3.2.4.1. Client's or its Personnel's negligence;
  - 3.2.4.2. Use of the Software outside what is described in the Documentation, as long as such use is not in contravention of the Agreement; and
  - 3.2.4.3. Accidents and other events occasioned by Client and for which Forsta is not responsible.

**3.3. SERVICE ENHANCEMENTS**

- 3.3.1. During the Term of this Agreement and to the extent Forsta deems it necessary Forsta will enhance the Service by upgrading the Software or the equipment supporting the Service. Software upgrades will ensure backwards compatibility unless Client's Designated Users have been notified otherwise via e-mail or Forsta newsletter no less than ninety (90) days in advance.

**3.4. ADDITIONAL SERVICES**

- 3.4.1. Subject to availability of Forsta's resources and subject to the Parties' agreement concerning pricing and other terms Forsta will upon Client's request provide Client with **Additional Services**.
- 3.4.2. Rates for Additional Services will be set forth in the applicable Sales Order. Forsta shall bill Client for Additional Services in thirty (30) minute increments.
- 3.4.3. Additional Services are offered in the four following categories:
  - 3.4.3.1. **Professional Services/Project and Authoring Assistance:** Tasks that Client chooses to outsource to Forsta, including questionnaire programming, survey layouts and report building, project and respondent administration, any HTML programming (in whole or in part) of questionnaires or reports, and quality assurance/checking of programming e.g. related to templates and survey layouts, Reportal designs, J-Script / SQL / QSL assistance, or similar.
  - 3.4.3.2. **Technical Consultancy/Systems Development:** Tasks such as recovery from backups after deletion caused by client or development of custom tailored functions both in questionnaires and reporting.
  - 3.4.3.3. **Error correction payable by Client:** Rectification of errors occurring under the conditions mentioned in Section 11.4 of this Agreement.
  - 3.4.3.4. **On Site Support or User Support outside Standard Support Hours:** Where Client's Designated Support Contact requests support assistance either at its location or outside Standard Support Hours then this shall be classified as an Additional Service and payable as a consultancy service.
- 3.4.4. If a problem Forsta has tried to resolve on the assumption that it falls within the Limited Warranty does not in fact do so, Client shall subject to Client's prior written approval pay for the Support and other services Forsta has provided to investigate the problem at the rates Forsta ordinarily charges for Additional Services.

**4. STANDARD SUPPORT HOURS AND TARGET RESPONSE TIME**

- 4.1. Forsta's standard support hours ("**Standard Support Hours**") are:
  - 4.1.1. For agreements under the laws of a European country: 08.00-17.00 Central European Time (CET), from Monday to Friday, with the exclusion of New Year's Day; Good Friday; Easter Monday; Christmas Day; and Boxing Day.
  - 4.1.2. For agreements under New York or California law: 09.00-20.00 Eastern Standard Time (EST), from Monday to Friday, with the exclusion of New Year's Day; Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; Friday following Thanksgiving Day; and Christmas Day.
  - 4.1.3. For agreements under the laws of Australia: 09.00-17.00 Australian Eastern Standard Time (AEST), from Monday to Friday, with the exclusion of New Year's Day; Australia Day; Good Friday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; and Boxing Day.
- 4.2. Client may order support service in multiple time-zones at an additional fee upon execution of a Sales Order.
- 4.3. Forsta will aim at responding to Support requests according to the urgency of the request as specified below:

Category	Target Response Time	Category guidance
<i>Emergency</i>	2 business hours	A Software error that renders the whole system or a substantial part of it inoperative and which is not clearly due to user errors or issues on the user end.

<i>High priority</i>	8 business hours	Errors that do not affect critical parts of the Software. Questions about the Software's functions that are critical for immediate start-up or finalization of a project.
<i>Medium priority</i>	1 business day	Other inquiries and minor errors or error messages. Questions about functions that are not critical for start-up or finalization of a project.
<i>Other inquiries</i>	2 business days	Requests about new functionality, system architecture, or similar.

- 4.3.1. **"Business hours"** is defined as time within the Standard Support Hours.
- 4.3.2. **"Category"** can be selected by the Designated Support Contact upon posting the request through the Forsta Extranet. Category may be changed by Forsta's Personnel if request is not in accordance with specifications in the above table.
- 4.3.3. **"Target Response Time"** is defined as the time elapsing from receipt of the request to Forsta initiating action to resolve the issue. The time to arrive at a solution may be longer. Client will normally be informed of the status of Client's request within the response times listed above.
- 4.4. Where a non-critical fault (a fault that does not substantially hinder or prevent Client from using a material part of the functionality of the software in question) is to be corrected in a forthcoming Service Enhancement, then for a period of up to ninety (90) days prior to the Service Enhancement Forsta shall be entitled to decline to provide assistance in respect of that non-critical fault.

**5. TRAINING**

- 5.1. Forsta will upon mutual agreement and at the rates agreed upon by the Parties, train Client's Personnel in the use of the Software.
- 5.2. Client is to ensure that those of Client's Personnel who are to receive any form of training from Forsta are already proficient and experienced in the use of computer equipment and software.
- 5.3. Client accepts Forsta's cancellation policy for training courses as defined herein:
  - 5.3.1. The course will be invoiced in full on course booking.
  - 5.3.2. If the participant cancels more than four (4) weeks before the course date then the course can be re-booked and the initial invoice transferred at no additional charge.
  - 5.3.3. If the participant cancels within four (4) weeks of the course date, the initial invoice is non-refundable or date transferable, and each participant will receive a fifty percent (50%) discount when booking a future course.
  - 5.3.4. The cancellation policy applies to booking dates and revised booking dates alike; cancellations can only be made by sending an e-mail to [training@confirmit.com](mailto:training@confirmit.com), an alternative e-mail address as informed by Forsta, or to the appropriate account manager at Forsta.
  - 5.3.5. Already incurred, non-redeemable travel expenses for instructors will be invoiced irrespective of any cancellation.

**6. TRAVEL EXPENSES**

- 6.1. Client shall reimburse Forsta for pre-approved (in writing, including e-mail) travel expenses and living expenses (coach airfare, standard hotel, food, and rental vehicle).

**SCHEDULE 5  
SERVICE LEVEL AGREEMENT (SLA)**

**1. BACKUP RETENTION AND RECOVERY OF DATA HOSTED ON THE HORIZONS SAAS PLATFORM**

- 1.1. Forsta shall perform system backups, including program files, configuration files, and data files, but excluding certain types of data capable of being regenerated (see Section 1.5 below), according to the following schedule:
  - 1.1.1. **Weekly full backup**
    - o Step one: Backup is performed locally, compressed, encrypted, and stored on a network attached storage ("NAS") device.
    - o Step two: The encrypted backup files are copied to external media.
  - 1.1.2. **Daily incremental backups**
    - o Step one: Backup is performed locally, compressed, encrypted, and stored on a NAS device.
    - o Step two: The encrypted backup files are copied to external media.
  - 1.1.3. **Weekly media to off-site shipping**
    - o Once a week, all backup media are shipped to a secure off-site location where each is stored for fifty-two (52) weeks.
- 1.2. The backup media stored off-site may be managed by a third-party supplier of the SaaS Hosting Environment, provided however

that the files contained on the backup media or the backup media themselves shall be properly encrypted by use of industry accepted encryption standards.

- 1.3. In the event of Service data loss caused by any party other than Client, Forsta shall at all times be able to commence the data restoration process within two (2) hours after it has become necessary and shall proceed with restoration without undue delay. If Client has caused the data loss, data recovery will be initiated within one (1) business day after receipt of a Client request and will be subject to standard charges for the recovery.
- 1.4. Data deposited by Client on Forsta's SFTP servers may be permanently deleted after thirty (30) days. The SaaS Service data which is used as the source for transfer of data to the SFTP servers, will not be affected by such SFTP deletions.
- 1.5. Forsta may at its own reasonable discretion choose not to backup certain types of data, provided however that Forsta shall provide Client with the ability to regenerate such data via the Service based on the data that is being backed up. As an example, files generated in the Software based on collected data in order to achieve more efficient reporting datasets (e.g. in BitStream and SmartHub) will not be backed up but can be regenerated.
- 1.6. Client releases Forsta and its Affiliates from liability in relation to Transient Data. Client can at any time export data from Forsta at its own discretion and at its own expense. This will not affect Forsta's responsibilities set forth in this Section 1.

## 2. MAINTENANCE CATEGORIES; OUTAGE NOTIFICATIONS

- 2.1. Forsta may carry out the following four categories of maintenance on the SaaS platform:
  - 2.1.1. **"Maintenance Window"** shall mean Monday to Friday: 01.00-01.30 Eastern Standard Time (EST) / 07.00-07.30 Central European Time (CET); and Saturday and Sunday: 01.00-03.00 EST / 07.00-09.00 CET. Daylight Savings Time observation may affect local times. For Clients operating on the Australian SaaS Hosting Environment, maintenance times will be set forth in separate schedule. Maintenance Windows may or may not be utilized by Forsta.
    - 2.1.1.1. Designated Users, including CATI supervisors, attempting to login or work in the Software during a utilized Maintenance Window may get error messages or be shown a page informing that maintenance is taking place, preventing normal access to the Service during the Maintenance Window. During such utilized Maintenance Windows, pre-scheduled tasks (such as exports, report publication, etc.) will normally be paused and resumed for execution once the maintenance is completed.
    - 2.1.1.2. If Forsta expects Respondents to be affected by a Maintenance Window, Forsta will inform Client according to the notification process outlined in subsection (ii) of 2.1.2 below.
  - 2.1.2. **"Scheduled Maintenance"** shall mean maintenance outside of the Maintenance Window that has been publicized by Forsta in the news area of the Software at least five (5) business days in advance. Scheduled Maintenance expected to impact (i) Designated Users outside the Maintenance Window; or (ii) Respondents for more than five (5) minutes at any time will be communicated via e-mail to Client's Designated Users.
  - 2.1.3. **"Urgent Maintenance"** shall mean the implementation of a critical patch relating to security or performance and deemed to be too urgent to wait until the next Scheduled Maintenance period or the next Maintenance Window. Forsta shall inform Client about planned Urgent Maintenance as soon as reasonably possible and with the same channels of communication as defined under Sub-Section 2.1.2 above.
  - 2.1.4. **"Emergency Maintenance"** shall mean activities performed in connection with severe issues with the Service such as Service being unavailable and that did not allow for pre-notification of users. Emergency Maintenance shall count as Service Unavailability as defined below.
- 2.2. **Notifications of Outages:** In the event of (i) substantial deterioration of service performance or (ii) Service Unavailability; Forsta will follow this notification process:
  - 2.2.1. If the authoring section of the Service is operational, information will be posted in the Forsta news area of the Software as soon as practically possible.
  - 2.2.2. If access to the SaaS Hosting Environment is prevented, to the extent technically feasible, Forsta will post an unbranded, neutral maintenance page explaining that the servers are not available and requesting visitors (either Designated Users or Respondents) to return later.
  - 2.2.3. For any Service Unavailability impacting Respondents and approaching the duration of sixty (60) minutes, Forsta will endeavor to send e-mails to all Designated Users informing about the situation. A follow-up e-mail, including preliminary cause analysis will be sent when the Service is up and running again.
  - 2.2.4. The news section in the Software is the key repository of performance related information, and Designated Users are strongly advised to regularly check such news.
  - 2.2.5. Forsta is not responsible for the non-delivery of e-mails due to issues outside its control, including (i) firewall or anti-spam rules at the recipient's end; and (ii) Designated Users who have in the Software opted out from receipt of notifications.

## 3. SERVICE AVAILABILITY & UNAVAILABILITY

- 3.1. **"Quarter"** is defined according to calendar year so that Q1 is January through March, Q2 is April through June, etc.
- 3.2. **"Service Unavailability"** shall mean the number of minutes outside of Maintenance Windows, Scheduled Maintenance, and Urgent Maintenance with complete and sustained unavailability of the parts of the Horizons SaaS Hosting Environment relating to either one or both of (i) Respondents' ability to complete web-based surveys (not including surveys depending on interaction with XML Web Services and Flex applications or with Client's systems), or (ii) third parties' ability to view published reports through the Reportal module.

3.3. “Service Availability” shall be calculated as follows:

$$\left[ \frac{(\text{Total number of minutes in the Quarter}) - (\text{Service Unavailability})}{\text{Total number of minutes in the Quarter}} \right] \times 100\%$$

**4. SERVICE LEVEL AGREEMENT**

- 4.1. Although the Service may not be uninterrupted or error-free, Forsta shall make commercially reasonable efforts to provide a ninety-nine and seven- percent (99.7%) Service Availability on a Quarterly basis (the “Service Level Agreement”).
- 4.2. In the event of a breach of the Service Level Agreement, Client’s sole remedy is the issuance of performance compensation days specified herein.
- 4.3. If Service Unavailability is sustained for more than an average of one hundred thirty-two (132) minutes per month over a Quarter, equivalent to six and a half (6 ½) hours per Quarter and to zero and three percent (0.3%) downtime, then Client shall have the right at its option, subject to Client’s retained responsibilities, to claim compensation in terms of day(s) of contractual SaaS access at no charge, or to request credit of the equivalent monetary value of the applicable compensation set forth herein, as follows:

Unavailability per Quarter in minutes	Performance Compensation Days (“Compensation”)
Up to 396 minutes	None
397 to 1620 minutes	Two extra days of service at no cost
1621 or more minutes	Three extra days of service at no cost

**5. SPECIFICATIONS**

- 5.1. Client may not claim Compensation for any Service Unavailability experienced by Client and Client’s clients or Respondents due to restoration of data or disaster recovery at any time when such restoration of data or disaster recovery is due to loss of data which is not the direct or indirect fault of Forsta or Forsta’s third-party suppliers.
- 5.2. Forsta will use reasonable efforts to minimize any impact of Maintenance Windows, Scheduled Maintenance, and Urgent Maintenance on Client, Client’s clients and respondent’s use of the Service.
- 5.3. Client may claim Compensation for any Service Unavailability experienced by Client, Client’s clients, or Respondents due to extensions to the Maintenance Window specified above and which have not been caused by a Force Majeure situation.
- 5.4. Any Service Unavailability caused by Client’s failure to comply with the System Requirements, failure to comply with the AUP, or any event otherwise classified as Force Majeure shall not be covered by this Service Level Agreement.
- 5.5. In addition to the notification process set forth in Section 2.2 of this Schedule 5, Forsta shall within a reasonable time notify Client through the Forsta news area of the Software when Forsta’s monitoring system has detected a breach of this Service Level Agreement.
- 5.6. A quarterly report on the Service Availability will be posted on the Forsta news area or the Forsta homepage.
- 5.7. Claims for days of Compensation as described in this Schedule 5 must be presented by Client by e-mail to [claim@confirmit.com](mailto:claim@confirmit.com) by the fifteenth (15<sup>th</sup>) day of the month following the Quarter in which the incident occurred.

**6. HOUSEKEEPING: ROUTINES AND PROCEDURES**

- 6.1. **Batch tasks.** To avoid sudden activity peaks which may compromise the authoring environment, Forsta manages the execution of tasks that can run at the same time. As a result, Client may from time to time experience that tasks are queued and not executed exactly on the scheduled time. E-mails may take some time to process and dispatch, so Client is advised to include some margin if e-mails need to reach recipients by a certain hour.
- 6.2. **Housekeeping:**
  - 6.2.1. **Deletion of Test Databases:** Forsta may delete test databases fourteen (14) days after the test database was last accessed. If Client needs a new test database, a new one can be generated from within the application.
  - 6.2.2. **Reportal Reports.** Forsta may delete reports that are linked to Horizons projects that have been deleted from the Software if such reports do not also link to projects that still exist on the system. Functionality is available in the Software to allow the Client to export report definitions for local storage on its own PC or network.
  - 6.2.3. **Bitstream and SmartHub Files:** Certain functionalities in the Service will generate intermediary files (e.g. Panel Samples, Rapid Results, or similar) based on the original data. Such files will stored in the Software areas referred to as Bitstream, SmartHub, and similar, and Forsta may delete such files after sixty (60) days.
  - 6.2.4. **Recorded Interviews in CATI:** Interviews will normally be removed from the system after thirty (30) days. Response data is not removed; only metadata relating to the CATI interview itself is deleted.
  - 6.2.5. **Archiving of Projects and Data:** The Software performs periodic archiving of projects and data that have been idle for a certain period of days, which is currently forty (40) days subject to change. Project owners will be notified via e-mail in advance and can reject the archiving via the Software. Archived projects can be retrieved by the Designated User via the Software. Archived projects will be compatible with the Software for at least two (2) years from the archiving date.

**SCHEDULE 6  
MUTUAL CONFIDENTIALITY TERMS**

## 1. CONFIDENTIAL INFORMATION

1.1. Each Party to this Agreement recognizes that throughout the Term they and their Affiliates may need to disclose to the other Party and its Affiliates certain confidential non-public commercial or technical information (“**Confidential Information**”), whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” including but not limited to: (i) unpatented inventions, ideas, concepts, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property; (ii) data, software, designs, specifications, documentation, source code, object code, images; (iii) information concerning the Disclosing Party’s and its customers’, suppliers’, and other third parties’, past, present, and future business affairs; (iv) other information that would reasonably be considered non-public, confidential or proprietary given the nature of the information and the Parties’ businesses; and (v) notes, summaries, and other materials prepared by or for the Recipient or its Personnel that contain, or are derived, in whole or in part, from any of the foregoing. For clarity, the Forsta Materials are the Confidential Information of Forsta, and Client Materials are the Confidential Information of Client. For the purposes of this Schedule 6 only, the term “**Personnel**”, defined in Section 1.27 of Schedule 7, shall be supplemented with each Party’s consultants, attorneys, auditors, accountants, financial advisors.

## 2. THE PARTIES AGREE

- 2.1. The Parties agree that all Confidential Information received from the Disclosing Party remains the property of the Disclosing Party and its licensors and the Recipient undertakes, subject to the exceptions in Article 3 of this Schedule:
- 2.1.1. to treat and hold as confidential all Disclosing Party’s Confidential Information obtained from the Disclosing Party; and
  - 2.1.2. to use such Confidential Information solely for the purpose for which it was supplied, which unless otherwise stated in writing at time of disclosure by the Disclosing Party means solely in connection with the subject matter of the Agreement; and
  - 2.1.3. not to disclose such Confidential Information in whole or in part to any third-party without the Disclosing Party’s prior written consent and to only disclose such information to its Personnel or Personnel of the other Party, in each case on a need to know basis who are subject to written confidentiality agreements no less restrictive than the confidentiality provisions of this Agreement covering the information and who are informed by the Recipient of the confidential nature of the Confidential Information so received and each Party’s confidentiality obligations under this Agreement; and
  - 2.1.4. not to use Disclosing Party’s Confidential Information for itself or on behalf of third parties to design, develop, or manufacture similar products or products in competition to those of the Disclosing Party, or otherwise in any manner to the Disclosing Party’s detriment;
  - 2.1.5. to promptly notify the Disclosing Party of any unauthorized disclosure of Confidential Information or other breaches of this Agreement by the Recipient or its Personnel of which the Recipient has knowledge; and
  - 2.1.6. to fully cooperate with the Disclosing Party in any effort undertaken by the Disclosing Party to enforce its rights related to any such unauthorized disclosure.
- 2.2. Each Party shall use all reasonable efforts to ensure that its Personnel comply with the provisions hereof. Recipient will be responsible for any breach of this Agreement caused by its Personnel.
- 2.3. Nothing in this Agreement will prevent either Party from using in any manner whatsoever its own Confidential Information or Confidential Information generated by its own Personnel, without the use of the Confidential Information of the other Party.
- 2.4. Recipient is not prohibited from developing or having developed for it information, products, concepts, systems, or solutions (the “**Products**”) that are similar to or compete with the Products of Disclosing Party provided that Recipient does not violate any confidentiality obligations under this Agreement or infringe any IPR.
- 2.5. For the purpose of clarity and further to Sub-Section 2.1.3 in this Schedule any Confidential Information exchanged under this Agreement may be made available by Forsta to Personnel of its Affiliates and to its and other Forsta group companies’ third-party suppliers for the furtherance of the Agreement. Such release of Confidential Information will be strictly on a need to know basis to Personnel who are subject to written confidentiality agreements protecting the information by terms comparable in scope with the terms of this Schedule 6 and who are informed by Forsta of the confidential nature of the Confidential Information so received and each Party’s obligations under this Agreement.

## 3. EXCEPTIONS

- 3.1. The provisions of Article 2 of this Schedule shall not extend to information:
- 3.1.1. which was rightfully in the possession of the Recipient or its Personnel, as established by documentary evidence, prior to receipt from the Disclosing Party; or
  - 3.1.2. with the exception of Personal Data, which is already public knowledge or becomes so at a future date otherwise than as a result of a breach of this Agreement by the Recipient or its Personnel; or
  - 3.1.3. which is obtained from a third-party free of restriction, such third-party having the right to so disclose; or
  - 3.1.4. which is independently developed by the Recipient or its Personnel without the participation of individuals who have had access to the Confidential Information; or
  - 3.1.5. which is required or ordered to be released by law or by any court or tribunal or governmental authority of competent jurisdiction, or by other valid legal process; provided that unless prohibited by applicable law or court order or other valid legal process Recipient provides the Disclosing Party with prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate relief; and further provided that the Recipient

provides such assistance as the Disclosing Party may reasonably request, at Disclosing Party's expense, in obtaining such order or other relief. Subject to the foregoing sentence, such Recipient may furnish that portion and only that portion of the Confidential Information that the Recipient is legally compelled or is otherwise legally required to disclose on the advice of the Recipient's legal counsel.

#### **4. OWNERSHIP**

- 4.1. No rights, obligations, representations, or terms other than those expressly set forth herein are to be implied from this Agreement. In particular, without limitation, no license is hereby granted directly or indirectly under any patent, trademark, trade secret, or copyright held by or which is or may be licensable by either Party to the other unless expressly provided in this Agreement. Furthermore, no intellectual property rights of any kind are transferred from one Party hereto to the other by virtue of this Agreement.
- 4.2. Disclosure of information by either Party hereto to the other in no way constitutes any representation or warranty as to the accuracy of such information, and the Disclosing Party shall in no way become liable for any loss or damage suffered by the Recipient due to any inaccuracy in such.

#### **5. VALIDITY**

- 5.1. The Parties' confidentiality obligations shall continue to apply notwithstanding the termination of this Agreement for whatever reason.

#### **6. UNAUTHORIZED DISCLOSURE**

- 6.1. The standard of care for protecting Confidential Information imposed on the Recipient will be that degree of care the Recipient uses to prevent disclosure, publication, or dissemination of its own Confidential Information of a like or similar nature but not less than reasonable care.
- 6.2. If either Party loses or makes unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party promptly and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.
- 6.3. Notwithstanding any other provision herein, each Party acknowledges that any breach of these mutual confidentiality terms cannot be fully compensated by monetary damages and agrees that the Parties shall have the right to seek injunctive relief in the event of any breach hereof in addition to damages and any and all other remedies at law or equity.

#### **7. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 7.1. Upon request at any time during or after the Term each Party shall subject to any legal or regulatory obligations imposed upon the Recipient requiring it to retain copies of specific Confidential Information return such Confidential Information of the other or delete, destroy, and make permanently unusable such Confidential Information and upon written request of the other Party certify destruction in writing within ten (10) days. Any request by Client for Forsta to return Confidential Information stored on the Service shall be subject to the fees for Additional Services, subject to Forsta having enabled Client throughout the Term to export such Confidential Information via the Service at Client's own initiative and at no additional cost to Client.
- 7.2. No later than sixty (60) business days after the termination or expiration of this Agreement, Forsta shall permanently delete all Client Materials stored on the Service and shall not continue to hold or process such deleted information.
- 7.3. Notwithstanding anything to the contrary herein, copies of the Confidential Information made incidental to normal backup of the Recipient's computer network, including the Service, are not required to be returned or destroyed; provided, however, that any such Confidential Information so retained shall remain subject to the confidentiality and data protection provisions contained herein for so long as it is retained by the Recipient.

#### **8. PREEMPTIVE EFFECT**

- 8.1. The provisions of this Schedule 6 supersede and replace any and all conflicting provisions of any other confidentiality or similar agreements between the Parties in force prior to the date hereof.

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### **SCHEDULE 7 DEFINITIONS**

1. The following definitions shall be applicable to the terms used in the text of this Agreement unless expressly stated otherwise in the text.
  - 1.1. **Access and Use Fees:** The fees set forth in Sales Order(s) and relating to rights to access and use the Software components, including base licenses, user seats, Add-Ons, User IDs, Third Party Accesses, and storage levels.
  - 1.2. **Add-On:** A specialized module which may be offered to Client as an option during the Term upon terms and fees mutually agreed between the Parties.
  - 1.3. **Additional Services:** Professional services, such as project and authoring assistance, technical consultancy, systems development, error correction payable by Client, and onsite support or user support outside Standard Support Hours.
  - 1.4. **Affiliate:** With respect to any Person, any other Person, directly or indirectly, through one or more intermediaries, Controlled by, or under common Control with that first Person. 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 Person whether through the ownership of voting securities, by contract, or otherwise.
  - 1.5. **Article:** A portion of this document identified by a number at the first (1<sup>st</sup>) level (e.g. "1", "2", "23", or similar). An Article will

also comprise all subordinate levels of text within the bounds of that Article.

- 1.6. **AUP:** Forsta's acceptable use policy that sets forth usage guidelines as well as the types of activities from which Client, Client Affiliates, Contractors, and their Designated Users must refrain as stated at [www.confirmit.com/Legal-Notices/](http://www.confirmit.com/Legal-Notices/).
- 1.7. **CAPI:** Computer assisted personal interviewing.
- 1.8. **CATI:** Computer assisted telephone interviewing.
- 1.9. **Client Materials:** In relation to Client's use of the Forsta Materials under this Agreement: (a) any surveys, questionnaires, reports, e-mail addresses, information, content, images, files, data including Personal Data, or other materials created in, collected into, inputted to, or imported into the Service by or on behalf of Client; (b) any materials in any format or medium whatsoever furnished to Forsta by or on behalf of Client under this Agreement; or (c) any application Client builds to interact or interface with the Software, e.g. through the APIs. For the purpose of this definition, any reference to Client shall include any Client Affiliate and any Contractor working on Client's and Client Affiliate's behalf.
- 1.10. **Confidential Information:** Defined in Schedule 6, Section 1.1.
- 1.11. **Forsta Materials:** Collectively, the Software, the Service, and the Documentation.
- 1.12. **Contractors:** Persons not directly employed by Client or any Client Affiliate, who are engaged by Client to access the Forsta Materials as permitted under this Agreement, and who are subject to substantially the same level of controls by Client as applied to its Personnel, including non-disclosure obligations; provided such Persons are not in the business of developing data collection or reporting software, or otherwise competing with Forsta.
- 1.13. **Designated Users:** Defined in Section 4.1.
- 1.14. **Disclosing Party:** The party who discloses Confidential Information to a Recipient.
- 1.15. **Documentation:** The Software's user manuals instructions, or other documents or materials, made available to Client as set forth in Schedule 1, that Forsta provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the Service or Forsta Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.
- 1.16. **Force Majeure:** any circumstances beyond each Party's reasonable control, including delays or interruptions due to third-party connectivity failure, failure of the internet or of any network, third-party denial-of-service attack, telecommunications, and similar operational failures or shortages, acts of God, flood, fire, earthquake or explosion, epidemic, pandemic, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law, regulation, order, ordinance, or similar, or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or transportation.
- 1.17. **GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council, in effect as of May 25th 2018.
- 1.18. **Horizons Unit:** The units utilized by Client in its use of the Service, as set forth in Schedule 2.
- 1.19. **Horizons Unit Fee:** The monetary fee associated with the purchase of a specific number of Horizons Units.
- 1.20. **IPR:** Intellectual property rights including patents, copyrights, design rights (both registered and unregistered), trade marks (both registered and unregistered), service marks, trade secrets, know-how, database rights, rights in domain names, and rights to all applications for any of the foregoing anywhere in the world.
- 1.21. **Losses:** All losses, liabilities, demands, claims, judgments, awards, damages, amounts payable in settlement, costs, and expenses (including all reasonable legal and other professional fees, expenses, and disbursements).
- 1.22. **Malicious Code:** Any virus, worm, Trojan horse, time bomb, spyware, or other malicious code intended to interrupt, corrupt, disable, or damage computer programs, systems, environments, or data, or to permit unauthorized access thereto but not software keys or other code designed to ensure compliance with applicable time-limited licenses.
- 1.23. **Sales Order:** The Forsta issued form utilized for licensing and for renewals to be signed by both Parties or their respective Affiliates to be valid and which is incorporated into this Agreement by reference.
- 1.24. **Parties:** Jointly, Client and Forsta (and each, individually, a "**Party**").
- 1.25. **Person:** Means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.
- 1.26. **Personal Data:** For agreements governed by US law, personal data shall include any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1 §6809(4), and "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103. For agreements governed by the laws of any country belonging to the European Economic Area, personal data shall have the meaning given to it in the GDPR. For agreements governed by Australian law, personal data shall include information or an opinion about an identified individual or an individual who is reasonably identifiable: (a) whether the information is true or not; and (b) whether the information or opinion is recorded in a material form or not.
- 1.27. **Personnel:** Each Party's employees and the employees of each Party's Affiliates. Further, any agents, contractors (including Contractors), and third-party suppliers permitted to act on behalf of each Party and its respective Affiliates under the terms of this Agreement.
- 1.28. **Recipient:** The party who receives Confidential Information from a Disclosing Party.
- 1.29. **Reportal:** A set of features in the Software related to creation and deployment of reports via the Service.
- 1.30. **Respondent:** An individual who responds to survey(s) which Designated Users have made available via e-mail invitations, pop-ups, links on homepages, or similar means. Access can be either via a public link, a unique link, or password protected access. A "data subject", as defined in the GDPR, shall be deemed a Respondent in this Agreement.

- 1.31. **SaaS Hosting Environment:** The multitenant server environment, outsourced to a third-party as of the Effective Date, where Forsta hosts the Software made accessible via the internet on a subscription basis.
- 1.32. **Section:** A portion of this Agreement identified by a number at the second (2<sup>nd</sup>) level (e.g. “1.1”, “2.2”, “23.6”, or similar). A Section will also comprise all subordinate levels of text within the bounds of that Section.
- 1.33. **Service:** Access to use the Software on the selected multitenant Forsta SaaS Hosting Environment.
- 1.34. **Service Enhancements:** Enhancements made to the Service by means of new or updated code deployed to the Service, including error correction, software modifications, and new versions to the extent and at a frequency Forsta at its reasonable discretion deems necessary.
- 1.35. **Service Level Agreement:** The terms set forth in Schedule 5 of this Agreement.
- 1.36. **Software:** Forsta’s proprietary Horizons software, including software originally developed or owned by other companies, as specified in the applicable Sales Order(s) and being licensed to Client under this Agreement in object code form only as described in the Documentation for that specific Software but excluding source code material and all preparatory design material.
- 1.37. **Sub-Section:** A portion of this document identified by a number at the third (3<sup>rd</sup>) level (e.g. “1.1.1”, “2.2.2”, “23.6.3”, or similar). A Sub-Section will also comprise all subordinate levels of text within the bounds of that Sub-Section.
- 1.38. **Term:** The Initial Term and all subsequent Term Extensions shall collectively be known as the Term.
- 1.39. **Term Extension:** Has the meaning set forth in Section 2.2 of this Agreement.
- 1.40. **Third Party Access:** The method made available by Designated Users to Respondents and to other parties by which individuals are permitted to access parts of the Service without using a User ID. Third Party Accesses are uniquely named access details used to access, look at, and use reports and dashboards deployed via the Service by Report Viewers (RVA), Report Designers (RDA), Report Analysts (RAA), Survey Dashboard Viewers (SDVA), and similar. Some features (including those in Active Dashboards and Action Management) may be offered as Add-Ons.
- 1.41. **Transient Data:** Data inadvertently or accidentally deleted from the Service for reasons related to SaaS Hosting Environment failures before the daily backup was scheduled to be completed as set forth in Section 1.1 of Schedule 5, limited to the last twenty-four (24) hours of data that has not yet been backed up by Forsta.
- 1.42. **Uncontested Invoice:** An invoice for which Client has not provided Forsta with any written notification contesting in good faith such invoice within thirty (30) days after receipt of said invoice. If Client fails to make such notification, Client will thereafter raise no objection to said invoice and will make full payment in accordance with it.
- 1.43. **User ID:** The unique access details issued to and used by each individually authorized Designated User for accessing and use of the Service. User IDs are offered with different permissions levels at different price levels as specified in the applicable Sales Order. User IDs include professional User ID, standard User ID, analyst User ID.