



## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is between the customer indicated on the Order Form (“**Customer**”) and Forte. This Agreement becomes a binding agreement upon Customer upon the earlier of (a) the signing of first Order Form referencing this Master Services Agreement or (b) use of the Software and Services listed on the applicable Order Form referencing this Agreement. Any new software, services and/or other Forte offerings can be added to this Agreement by amendment or Order Form, in either case, signed by both parties.

This Agreement includes the attachments and exhibits below, which are incorporated herein. Customer agrees to purchase the software and services it orders pursuant to an Order Form, and Forte agrees to furnish them, subject to the applicable terms and conditions.

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This Master Services Agreement last updated September 20, 2018 and is effective for any new Software or Services on or after this effective date.

# Attachment I – Software Use Rights

This Software Use Rights attachment is part of the Agreement between Forte and Customer and applies to all Software licensed by Customer.

**1. License.** Subject to, and conditioned upon Customer's compliance with, the terms and conditions of this Agreement, Forte hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable, limited license to use the Software solely for the Permitted Uses during the Term of this Agreement.

**2. Scope of Use.** Customer may permit Authorized Users to access and use the Software for its Permitted Use. The scope of the Permitted Use for the applicable Software is set forth in the Pricing Proposal or Order Form and any applicable software license exhibit. Except for the Hosted Software, Customer may make a reasonable number of backup copies of the Software solely for back up and disaster recovery purposes. Such copies may not be used in a Production Environment except temporarily if the Production Environment is not Available.

**3. Third parties.** The license granted to use the Software is solely for Customer's benefit. Customer may not be sub-lease, sub-license, sell, rent, assign, lease, or otherwise transfer or make it available to any third party in any manner not expressly authorized by this Agreement.

**4. Software Use Restrictions.** Customer may not, and will not permit any other person to, modify, alter, amend, fix, translate, enhance or otherwise create derivative works of the Software or to reverse engineer, decompile, or disassemble the Software except to the extent required or permitted by law.

**5. Minimum Hardware Requirements.** Except for Hosted Software, Customer must use, maintain, and update Customer Systems that meet or exceed the minimums set out in Forte's hardware requirements. The minimum requirements may vary by license metric, platform, and version. Forte makes the hardware requirements available at <https://www.forteresearch.com/legal-agreements/>. These minimum hardware requirements may be updated from time to time and are effective when posted.

**6. Third Party Software.** Certain of the Software may include Third Party Software licensed to Forte and may be provided to Customer in connection with the Software. Forte is required to pass-through certain terms for the Third Party Software to Customer, and Forte makes those terms available to Customer at <https://www.forteresearch.com/legal-agreements/>. These applicable pass-through terms are incorporated into this Agreement and subject to change. Changes are effective when posted. Forte represents that these pass-through terms do not limit Customer's licensed use of the Software as set forth in the Documentation.

**7. Software license term.** Software is licensed on a subscription basis for an initial term indicated on the applicable Pricing Proposal or Order Form. The Term will automatically renew for successive twelve (12) month terms unless either party provides at least 180 days' prior written notice of its intention not to renew. At the end of a Term, Forte reserves the right to change the Annual Payments, fees, license metrics, or other license terms for the renewing Software.

**8. Termination of Software Licenses.** Upon the termination or expiration, for any reason, of the license to any Software, Customer's right to use the applicable Software terminates. Customer must: (a) uninstall or delete the Software (including any Third Party Software), together with all copies of the Software and Documentation, in its possession; (b) take steps to delete any copies of the Software made for archival, backup and/or non-production purposes; and (c) certify in writing that Customer has complied with all of its obligations under this Section. Upon request and Forte's approval, Customer may keep a copy of the database with tables and data only, and all other Forte intellectual property removed.

## Attachment II - Professional Services

This Professional Services attachment is part of an Agreement between Forte and Customer.

**1. Statements of Work.** Forte will provide the Services as set forth in any number of Statements of Work in accordance with the terms of this Agreement. Except for those Statements of Work attached to the Agreement on the Effective Date, a Statement of Work is only effective when signed by both parties. This Professional Services Attachment is written in master form, and each Statement of Work is separate and independent of any other Statement of Work. Each Statement of Work will include the following information:

a. **Services to be performed.** A detailed description of the Services to be performed and the individual party roles and responsibilities. The description of services may include, if applicable, start dates, estimated completion date, and completion criteria.

b. **Points of contact.** The names of Forte and Customer personnel who are responsible for the applicable Statement of Work and the names or roles of party personnel who can make decisions.

c. **Fee estimates.** Estimates of the time and rates to perform such Services are set forth on the applicable Statement of Work, if such amounts are set out on the applicable Pricing Proposal or Order Form.

**2. Provision of Services.** Forte will provide resources and utilize its employees or Contractors as it deems necessary or appropriate to perform the Services. The manner and means used by Forte are in its sole discretion and control. Forte will comply with Customer's reasonable security policies and procedures provided to Forte prior to the start of the applicable Services and which (i) do not conflict with the terms of this Agreement; and (ii) do not require Forte or Forte's employees or Contractors to sign additional documents or pay additional fees, unless set forth in the applicable Statement of Work.

**3. Customer responsibilities.** Customer will cooperate fully to allow Forte to achieve completion of the Services in a timely and professional manner. Forte and Forte's employees and Contractors may rely on all decisions made by, and approvals from, Customer relating to the Services. Customer will provide reasonable access to Systems and facilities to Forte and its employees and permitted Contractors in order to provide the Professional Services, including implementation and training.

**4. Work Product.** Customer may use any Work Product delivered by Forte for the use in connection with the Software and for any purpose for which it was created. Forte will own all right, title and interest in any Work Product developed in conjunction with the Services and Customer acquires no other rights in the Work Product.

**5. Change Orders.** Any material changes to an existing Statement of Work must be done through a mutually agreeable Change Order signed by both parties. If Customer wishes to change the scope or performance of the Services provided under any Statement of Work, the Customer will provide the details of the requested change to Forte. Forte will prepare a written estimate and change order that includes (i) the estimated time required to implement or perform the requested change; (ii) any anticipated change to the fees or effort for the Services as a result of the change; and (iii) any other impact the change might have on the performance of the Services or this Agreement. Neither party is bound to any Change Order until it is signed by both parties. For purposes of this section, material changes include changes to any milestones, specifications of deliverables or Work Product, or changes in the scope of Services provided under the applicable Statement of Work.

### **6. Payment Terms for Services.**

a. **In general.** Forte will invoice Customer monthly, in arrears, for Services performed by Forte at (i) the rates set forth on the applicable Order Form or Pricing Proposal; or (ii) if no rate or fee is specified, Forte's then-current rates. Forte may change the rates for such Services upon notice to Customer.

b. **Fixed fees.** If an applicable SOW indicates that the Services will be provided for a fixed fee, then such amounts are subject to Customer's timely performance of its obligations under such SOW. If performance exceeds the indicated duration to provide services, any time attributable to Customer's material delays in performance or any Customer action or inaction that results in Forte's inability to provide the applicable services, will be invoiced at then-current rates for the Professional Services.

### **7. Term and termination of Statements of Work.**

a. **Termination.** Statements of Work will be for the term specified in the SOW. The parties acknowledge that termination or expiration of a specific Statement of Work does not terminate any other Statement of Work or this Agreement. Customer may terminate one or more of the Statements of Work upon thirty days' written notice to Forte. Forte may terminate or suspend, at its sole discretion, any Statement of Work if the (i) Customer fails to make timely payment of amounts due under the Statement of Work; or (ii) Customer otherwise fails to perform its obligations under the Statement of Work.

b. **Effect of Termination.** Except as otherwise specified in the affected Statement of Work, if a party terminates a Statement of Work, all amounts due to Forte become immediately due and payable.

## **Attachment III - Support & Maintenance Services**

This Support & Maintenance attachment is part of an Agreement between Forte and Customer.

**1. Definitions.** The following capitalized terms have the associated definitions for the purposes of this Attachment.

**“Customer Cause”** means any of the following causes of an Error: (i) any grossly negligent or improper use, misapplication, misuse or abuse of, or damage to, the Software (or Services) by Customer; (b) any maintenance, update, improvement or other modification to or alteration of the Software by Customer or its representatives; (c) any use of the Software by Customer in a manner inconsistent with the then-current Documentation; (d) any use by Customer of any third-party products that Forte has not provided or caused to be provided to Customer; (e) any use by Customer of a non-current version or release of the Software where the Error would have been avoided by using a current version; or (f) any use that is a result from, or is in connection with, any breach of the Agreement.

**“Out-of-scope Services”** means (a) any Customer-requested Services that Forte may agree in writing to perform that are not included in the Support Services; (b) any excluded services as set forth in Section 4; and (c) any Customer-requested Services that Forte may agree to perform relating to a Customer Cause.

**“Resolve,” “Resolved” and “Resolution”** means, with respect to a particular Support Request, that Forte has corrected or identified the path to resolution of the Error that prompted the Support Request and that Customer has confirmed such correction and acceptance of it in writing.

**“Response Time”** means the response time indicated in the table in Section 6 for the applicable priority level.

**“Resolution Time”** means the resolution time indicated in the table in Section 6 for the applicable priority level.

**“Service Levels”** means the Response Time and Resolution Time service levels specified in the table in Section 6.

**“Service Period”** means a calendar month.

**“Standard Support Hours”** means the hours indicated in Section 7(b).

**“Support Contact”** means a Customer employee who is responsible for generating Support Requests.

**“Support Request”** means a Customer request for Error correction services submitted to Forte in accordance with Section 6(c).

**“Support Services”** means Forte’s support services for the Software as described in this Attachment.

**2. Scope of Service.** During the Term for the applicable Software or Hosted Services, Forte will provide the Services set forth in this Attachment to Customer for Software. The provision of these Services is subject to Customer's compliance with the Agreement and this Attachment, including, without limitation, its payment in full of all applicable fees set forth in the Agreement. Customer acknowledges and agrees that Forte will provide support only for: (i) the then-current release of the Software; and (ii) the immediately previous major release of the Software.

**3. Services.**

a. **Support.** Except as provided in Section 4, Forte will provide the Support Services throughout the Term in accordance with the terms and conditions of this Exhibit and the Agreement, including the applicable Service Levels and other Forte obligations set forth in this Agreement. Forte will (i) respond to and Resolve Support Requests in accordance with the Service Levels; (ii) provide Support Services as set forth in Section 2; (iii) provide Customer with online access to user support information and forums, to the full extent Forte makes such resources available to its other customers; and (iv) provide to Customer all such other services as may be necessary or useful to correct an Error or otherwise fulfill the Service Level requirements, including commercially reasonable defect repair, programming corrections and remedial programming.

b. **Supported Environments.** Forte may provide support for Production Environment(s) and/or Non-Production Environment(s) as further described in the applicable Pricing Proposal or Order Form or software exhibit.

c. **Access Requirements.** In order to provide effective and timely Support Services, Forte and its support staff require secure and controlled access to the Software environments. Forte maintains a set of Remote Access Requirements for Software

available at <https://www.forteresearch.com/legal-agreements/> which it may update from time to time. Any changes to the access requirements are effective when posted. If, for whatever reason, Customer cannot provide Forte and Forte employees with access to its Systems in accordance with these access requirements, Forte reserves the right to charge additional fees for Support Services. In addition, Customer acknowledges that the Service Levels of this Agreement will not apply if Customer's security or access requirements limit or prevent Forte from providing the Support Services.

**4. Exclusions.** Support does not include: (a) providing access to new software, programs, modules or features that Forte advertises or licenses separately from any Software; (b) support or fixes for errors that do not materially affect the operation of the Software; (c) providing custom enhancements, features or modifications; (d) providing assistance for any of Customer's applications or other third-party applications; (e) providing direct assistance to any Customer end user or anyone other than the Support Contacts; (f) on-site support; or (g) any hardware or related equipment.

**5. Documentation.**

a. **Learning Portal.** Forte may maintain a knowledgebase for its Software. Such knowledgebase may contain written documentation, training manuals, videos, and release notes. Customer may access and use such online documentation during the Term as reasonably required to use and operate the Software.

b. **Release Notes.** Forte provides updated Documentation and release notes for any Software provided to Customer in accordance with the Agreement as the Software is generally released.

**6. Support requests.**

a. **Response and resolution.** Response and Resolution times will be measured from the time Forte receives a Support Request until the respective times Forte has (a) responded to that Support Request, in the case of response time and (b) Resolved that Support Request. Forte will respond to and Resolve all Support Requests within the following times based on Customer's designation of the severity of the associated Error, subject to the parties' written agreement to revise such designation after Forte's investigation of the reported Error and consultation with Customer:

Priority	Description	Response Time	Resolution/Path to Resolution Time
1	<b>Urgent.</b> Software working in Production Environment is down or no workaround in place for critical daily operations or data corruption that has a root cause of the Software.	30 minutes	Within 2 hours
2	<b>High.</b> Software working in Production Environment. Manual workaround in place for some part of daily operations or use of Software for production purposes is severely reduced.	Within 2 business hours	Within 1 business day
3	<b>Normal.</b> Software working in Production Environment. Minor loss of service. The impact is an inconvenience that may require a workaround to restore functionality. Low impact to daily operations.	Within 1 business day	Within 2 business days
4	<b>Low.</b> No loss of use of Software in Production Environment. Minor error that does not impede operations or enhancement request.	Within 2 business days	To be determined based on request

b. **Time extensions.** On a case-by-case basis, the parties may extend the above "Response Time" and/or "Resolution Time" by mutual agreement.

c. **Support Request procedure.** Forte will log the reported support request and provide Customer with an incident tracking number as a reference for making follow-up inquiries. The Support Request must contain, to the extent known: the name of the Software product, the version or release number (for Software); Customer contact name, e-mail address, phone

number, if available, and the nature of the support request, a description of the support request. After placing a Support Request, Customer personnel must remain available to receive a reply from Forte’s support personnel. Customer will provide Forte with as much information and access to systems as possible to enable Forte to investigate and attempt to identify and verify the reported maintenance issue. Customer will work with Forte support personnel during the problem isolation process, as reasonably needed. Customer will notify Forte of any recent configuration changes, such as network installation/expansion, upgrades to Customer’s Systems, relocations, etc.

d. **Support Request updates.** Forte will provide Customer regular electronic or written reports and updates of: (i) the nature and status of its efforts to correct any Error, including a description of the Error and the estimated time of Forte’s response and Resolution; and (ii) its Service Level performance, including Service Level response and Resolution times.

e. **Out-of-scope Services.** Forte may, at Customer’s request, provide to Customer the Out-of-scope Services in accordance with the terms and conditions of this Exhibit and the Main Agreement for an additional fee.

f. **Production change control.** When feasible, all changes to the Software or Customer Data should be applied first to a Customer’s Non-Production Environment. Once the changes are applied to the Non-Production Environment, Customer is responsible for verifying the changes before the changes are applied to the Production Environment. If Customer has additional change control steps, the Customer must communicate, in writing, any additional requirements to Forte. Compliance with, and maintenance of, Customer’s internal change control policies and procedures are the Customer’s sole responsibility. Any time attributed to Customer’s change control processes and obligations will not count toward Forte’s Resolution Time.

**7. Customer obligations.**

a. **Support Contacts.** Customer may designate up to five Support Contacts and must have at least one Support Contact designated as the primary support contact and final decision maker. Customer may re-designate its Support Contacts upon notice to Forte. Support Contacts are responsible for contacting Forte for Support Requests and for working with Forte to resolve such Support Requests and provide approval to complete support activities.

b. **Support Requests.** Support Contacts may request Support Services by way of a Support Request by telephone, the support ticketing system, or such other means as the parties may agree to in writing. Customer must include in each Support Request a description of the reported Error and the time Customer first observed the Error.

<p><b>Standard Support Hours</b> 7:00 AM – 6:00 PM Central Excluding Company Holidays. A list of company holidays is available via the Vendor’s support ticketing system</p>	<p>Phone 608.826.6001 or submit a ticket via Vendors support ticketing system</p>
<p><b>Urgent Support Hours</b> 365 days a year, outside Standard Support Hours</p>	<p>Phone 608.826.6001 – follow the prompts</p>

c. **URGENT SUPPORT REQUESTS.** Customer understands that any issues Customer believes are “Urgent” or “Time Sensitive” must be reported by telephone.

d. **Standard Support Hours.** Calls placed to the support line (608-826-6001) during Standard Support Hours may be answered by any Forte product specialist who will facilitate handling of the incident. Calls of a non-emergency nature (anything other than an Urgent Support Request) should be reserved for Standard Support Hours.

e. **Urgent Support Hours.** Outside of Standard Support Hours, an on-call support contact will contact Customer within thirty (30) minutes after Customer’s report of an Urgent, i.e., “Priority 1,” Support Request for a Production Environment. Urgent Support Requests must be made by phoning support line and selecting after hours support and leaving a voicemail if not connected directly to the on-call support contact.

f. **Customer Obligations.** In order to quickly address any issues or Errors, Customer’s Support Contact must (i) provide Forte with prompt notice of any Errors; (ii) assist Forte to reproduce operating conditions similar to those present when Customer detected the relevant Error; and (iii) cooperate with Forte as reasonably necessary to detect, reproduce, and Resolve the Support Issue. Customer must also provide Forte and Forte’s support personnel full access to the Software, Customer Data,



and Customer's personnel as well as any output and other data, documents and information that might be reasonably necessary to perform the Support Services.

g. **Escalation Procedures.** There are two methods of escalation. If there is a need for increased urgency for any issue or there is dissatisfaction regarding the progress of a particular Support Request, Customer should communicate this with Customer's assigned Product Specialist. Alternatively, Customer Support Contact may escalate the concern to the Director of Customer Support Services. The Director (or their designee) will investigate the concern and respond, including by adding additional support resources to expedite Resolution as appropriate.

h. **Major application downtime.** If any scheduled or unscheduled downtime for the Software in a Production Environment exceeds 24 hours, Forte will dedicate an application expert until the Production Environment is fully functioning again.

8. **Credits.** If Forte fails to respond to a Support Request within the applicable response time or fails to Resolve a Support Request within the applicable resolution time, then Customer will be entitled to a Service Credit in the amount of five (5) percent of the Attributable Support Fees for the Service Period in which the Error occurred. No Credit is due for any Error resulting from a Customer Cause.

# Attachment IV – Subscription Services

This Subscription Services attachment is part of an Agreement between Forte and Customer.

**1. Definitions.** The following capitalized terms have the associated definitions for the purposes of this Attachment.

“**Deliverable**” means any material, documents, software or other work product delivered or provided to Customer in connection with the Subscription Services.

“**Subscription Services**” means services provided by Forte to Customer, other than Professional Services, Hosting Services, and support and maintenance services, identified on the applicable Pricing Proposal or Order Form as a “Subscription Service.”

**2. Scope of Services.** From time to time, Forte may offer certain services to Customers on a subscription basis typically to facilitate Customer’s use or operation of the Software. The scope and terms of the applicable Subscription Service will be set out in separate terms that reference the Agreement. For the term of the applicable Subscription Service, Forte will provide that Subscription Service to Customer for the applicable fees.

**3. Intellectual property rights.**

a. **Customer content.** If Customer provides Forte with any Customer Data in connection with the Subscription Services, Forte may use the Customer Data solely for the purpose of providing the applicable Subscription Services and Customer retains all other rights in the Customer Data in the form it was provided to Forte. If Forte creates any Deliverables from the Customer Data and such Deliverable is considered a derivative work under the law, Forte owns all rights to the derivative work and will retain, in perpetuity, a license to use the Customer Data as appropriate to license, modify, and otherwise use the Deliverable.

b. **Deliverables.** As between Customer and Forte, Forte will retain all intellectual property rights in and to the Deliverables. Customer may use the Deliverables for the purpose for which they were provided to Customer. Deliverables are deemed Confidential Information of Forte. Unless stated otherwise in the applicable Pricing Proposal or Order Form, Customer’s rights to use Deliverables obtained during the term of the Subscription Services will continue for the Term of the Agreement.

**4. Fees and payments.** Fees and applicable payment terms for the applicable Subscription Services are set out on the applicable Subscription Services exhibit.

**5. Limitation.** Except for fees owed to Forte, the total liability of a party to the other for all damages, losses, and causes of action (whether in contract, tort, or otherwise) for the applicable Subscription Services will not exceed the total fees paid by Customer to Forte hereunder during the six (6) months immediately preceding the event giving rise to such liability. If at any time Customer feels that the Subscription Services are not performed satisfactorily, then, as Customer’s sole remedy, Customer may either request that Forte reperform that deficient services if such reperformance is possible or immediately terminate the Subscription Services.

**6. Term and termination.**

a. **Term.** The term of the applicable Subscription Services will be provided in the applicable Pricing Proposal or Order Form, unless otherwise terminated by a party. Unless otherwise provided, the Term for the Subscription Services will automatically renew for successive terms equal to the initial term unless either party provides at least 30 days’ prior written notice of its intention not to renew.

b. **Effect.** Expiration or termination of any Subscription Service is independent of the expiration or termination of any other and of this Agreement.



# Attachment V - Hosted Services

This Hosted Services attachment is part of the Agreement between Forte and Customer.

## 1. Definitions. The following definitions apply to this Attachment:

“**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

“**Availability**” means the percent of time the Hosted Services are Available for purposes of the Availability Requirement as calculated in this Attachment.

“**Availability Requirement**” means the Hosted Services are Available for at least the percentage indicated on the applicable Pricing Proposal or Order Form for the Hosted Software.

“**Available**” means the Hosted Services are available for access and use by Customer and its Authorized Users over the Internet in a Production Environment and operating in material accordance with the Documentation.

“**Disaster Recovery Plan**” means the documented disaster recovery and avoidance procedures intended to minimize any interruptions of the Hosted Services during a reasonably foreseeable disaster. The Disaster Recovery Plan includes a “Recovery Point Objective” and recovery time objective as set forth in the applicable Pricing Proposal or Order Form for the applicable Hosted Services.

“**Exceptions**” means periods in which the Hosted Services may not be Available but are not counted for purposes of the Availability Requirement.

“**Recovery Point Objective**” or “**RPO**” means the targeted period during which data may not be recoverable following a period in which the Hosted Software was not Available. The RPO for a specific Hosted Software, if any, is indicated at <https://forteresearch.com/legal-agreements/>.

“**Recovery Time Objective**” or “**RTO**” means the targeted duration of time for the applicable Hosted Software to make such Hosted Software Available following a period in which the Hosted Software was not Available. The RTO for specific Hosted Software, if any, is indicated at <https://forteresearch.com/legal-agreements/>.

“**Service Period**” means a calendar month.

## 2. Hosted Services.

a. **Access to and use of the Hosted Services.** Subject to Customer's compliance with the terms of the Agreement and payment of the applicable fees, Forte will use commercially reasonable efforts to host, manage, and operate the Hosted Services in substantial conformity with

the Documentation twenty-four hours per day, seven days per week, every day of the year in accordance with the terms of Section 7 (“Service Level Commitment”) for the Term of the applicable Hosted Software.

b. **Acceptance.** Forte will notify Customer when the Hosted Services are ready for use in the Non-Production Environment such that the Customer can access and use the Non-Production Environments for testing and evaluation purposes. If Customer is unable to access or use the Non-Production Environment, Customer may notify Forte in writing that the Hosted Services within ten days of such notice, and Forte will use reasonable efforts, at no additional charge, to correct such issues and repeat this process. Otherwise, Customer accepts the Hosted Services, and the Parties will work together to prepare the Hosted Services for use in the Production Environment in accordance with the applicable project or implementation plan.

c. **Acceptable use policy.** Customer's use and access to the Hosted Services is subject to Forte's “Acceptable Use Policy” which is available at <https://forteresearch.com/legal-agreements/> which it may update from time to time. Any changes to the Acceptable Use Policy are effective when posted.

## 3. Service and System Control.

a. **Forte Systems.** Forte has and will retain sole control over the operation, provision, maintenance, and management of the Forte's Systems, including the selection, deployment, modification, and replacement of the Systems; and the performance of maintenance, Upgrades, corrections, and repairs of the Forte's Systems.

b. **Hosted Software.** Forte will provide Upgrades to the Hosted Software. All Upgrades, if provided while under support, will be deemed to be Hosted Software.

c. **Customer Systems.** During the Term Customer must set up, maintain, and operate in good repair, and in accordance with the Documentation, all Customer's Systems on or through which the Hosted Services are accessed or used. Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, Customer's Systems, and sole responsibility for all access to, and use of, the Hosted Services and the Forte Materials by any person by or through the Customer's Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to the Hosted Services or Forte; (ii) results obtained from any use of the Hosted Services or the Forte Materials; and (iii) conclusions, decisions, or actions based on such use.

d. **Customer Data; Data Use.** Customer grants to Forte a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate Customer Data to the extent reasonably required for the performance of Forte's obligations and the exercise of Forte's rights under this Agreement. Additionally, Customer agrees that Forte may use De-Identified Data and data derived by Forte from Forte's performance of the Services or input by Subscriber for the purposes of analysis, including statistical analysis, trend analysis, creation of data models, and creation of statistical rules.

4. **Changes.** Forte reserves the right, in its sole discretion, to make any changes to the Hosted Services and Forte Materials that it deems necessary or useful.

#### 5. Security.

a. **Forte's Systems and Security Obligations.** Forte will employ security measures in accordance with Forte's data privacy and security policy which is available at <https://forteresearch.com/legal-agreements/> ("Privacy and Security Policy"). Forte reserves the right to update the Privacy and Security Policy from time to time and those changes will go into effect when posted to the site.

b. **Data Breach Procedures.** Forte maintains a data breach plan in accordance with criteria set forth in Forte's Privacy and Security Policy and will implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

c. **Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Hosted Services; (c) the security and use of Customer's and its Authorized Users' Access Credentials; and (d) all access to and use of the Hosted Services and Forte Materials directly or indirectly by or through the Customer's Systems or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

d. **Access and Security.** Customer must employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services.

6. **Suspension of Hosted Services.** Forte reserves the right to suspend, terminate, or otherwise deny Customer's access to or use of all or any part of the Hosted Services and/or Hosted Software, without incurring any resulting obligation or liability, if: (a) Forte receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Forte to do so; (b) Forte believes that

Customer (or an Authorized User) has accessed or used the Hosted Services 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 material instruction or requirement of the Documentation or has otherwise breached a material term of the Agreement; or (c) this Agreement expires or is terminated.

#### 7. Service Level Commitment.

a. **Availability.** During each Service Period, the Hosted Services will meet or exceed the Availability Requirement, except as expressly set forth below. The Hosted Services will be considered not Available starting from the time that Customer notifies Forte that the Hosted Services are not Available and Forte validates that the Hosted Services are not Available until the time that Forte deems the Hosted Services are Available for use by the Customer. Minutes are rounded to the nearest whole minute. The period of Availability for a given Service Period will be computed based on the following formula:

$$\text{Availability} = \left( \frac{(T - E) - U}{(T - E)} \right) \times 100.$$

Where:

T = total minutes in a Service Period.

E = total minutes for Exceptions in a Service Period.

U = total minutes in which Hosted Services are not Available in a Service Period.

b. **Exceptions.** For purposes of determining Availability, any time attributable to the following are excluded when determining Availability: (1) Customer's acts or omissions; (2) Customer's Internet connectivity; (3) Internet traffic outages, delays or problems not under Forte's reasonable control; (4) Customer's Systems; (5) any hardware, software, service, or other equipment used by an individual user to access the Hosted Services; (6) planned maintenance periods or scheduled downtimes with at least five business days' notice to Customer; and (7) periods for Forte to Upgrade Customer's Hosted Services, as agreed upon by Customer and Forte. Because security of the Hosted Services and Customer information is extremely important to Forte, the Exceptions to the Availability Requirement also includes emergency maintenance required to mitigate or remedy a real and/or immediate threat to the security or availability of the Hosted Services and Forte will provide Customer with at least twenty-four (24) hours' notice of such maintenance when commercially reasonable.

8. **Credits.** If the Hosted Services' Availability does not meet the Availability Requirement, but is at least 95%, then Customer is entitled to a Credit in the amount of five (5%) of Attributable Hosting Fees for the Service Period in which Hosted Services do not meet the Availability Requirement. If the Hosted Services' Availability is less than 95%, then the Customer will be entitled to request a Credit of ten

percent (10%) of Attributable Hosting Fees for the Service Period in which Hosted Services do not meet this service level.

**9. Disaster Recovery and Backup.** For certain Hosted Software, Forte makes available certain disaster recovery and back up options which are described in <https://forteresearch.com/legal-agreements/> (“Disaster Recovery Plan”) which Forte may update from time to time. Any changes to the Disaster Recovery Plan are effective

when posted. Forte reserves the right to update the policy as it deems reasonable and necessary. Forte shall comply with the applicable Recovery Point Objective and Recovery Time Objectives for the Hosted Software, provided, that the Recovery Time Objective does not include VPN connectivity between sites and does not include connectivity for interfaces.

# Attachment VI - Business Associate Agreement

This Business Associate Agreement attachment is part of an Agreement between Forte and Customer and applies to the use and disclosure of Protected Health Information unless the parties have a separately signed Business Associate Agreement (“Negotiated BAA”) in which case the terms of the Negotiated BAA replace and supersede the terms of this Attachment.

**1. Definitions.** The capitalized terms used in this Attachment, not otherwise defined in the Agreement, have the definitions and meanings in Attachment VI – Exhibit A.

**2. Purpose.** Covered Entity possesses Protected Health Information that is protected under HIPAA, HITECH and the HIPAA Regulations. The parties reasonably anticipate that Business Associate will have access to and may receive Protected Health Information from Covered Entity in connection with its performance of Services for Covered Entity. And Covered Entity is required under HIPAA to have a “Business Associate Agreement” that meets certain requirements regarding use and disclosure of PHI. The purpose of this Attachment is to enable Covered Entity and Business Associate to meet their obligations under HIPAA, HITECH and the HIPAA Regulations.

### **3. Obligations and activities.**

**a. Use and disclosure.** Business Associate will not use or disclose Protected Health Information other than as permitted or required by this Attachment, the Agreement or as Required by Law.

**b. Adequate safeguards.** Business Associate will use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 of the HIPAA Regulations with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Attachment or the Agreement.

**c. Reporting.** Business Associate will report to Covered Entity any “Security Incident” respecting ePHI in Business Associate’s possession or control, and any use or disclosure of PHI not provided for by the Agreement (including Breaches of Unsecured PHI) within twenty (20) calendar days of becoming aware. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but ineffective Security Incidents that are trivial in nature, such as pings and other broadcast service attacks, and Covered Entity acknowledges and agrees that this section shall constitute notice, and no additional notification to Covered Entity of such ineffective Security Incidents is required, as long as no such incident results in unauthorized access, use or disclosure of PHI.

**d. Notifications regarding Breaches of Unsecured PHI.** If Business Associate determines that a Breach of Unsecured PHI has occurred, Business Associate will provide a written report to Covered Entity in accordance with §§ 164.410 and 164.412 of the Regulations.

**e. Subcontractors.** Business Associate agrees to ensure that any Contractors that create, maintain, receive, or transmit PHI on behalf of Business Associate will comply with the same or similar restrictions that apply to Business Associate under this BAA with respect to PHI.

**f. Internal Practices, Books and Records.** Business Associate will make its internal practices, books and records relating to the Use and Disclosure of Covered Entity’s PHI available to the Secretary for purposes of determining Covered Entity’s compliance with HIPAA, the HIPAA Regulations, and the HITECH Act.

### **g. Designated Record Set.**

**i.** If Business Associate maintains a Designated Record Set for Covered Entity, then, upon Covered Entity’s request and at a time and manner reasonably designated by Covered Entity, Business Associate will provide access to the PHI it maintains (or which is maintained by its Contractors) in Designated Record Sets to Covered Entity for inspection and copying, or to an individual to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.524 of the Regulations.

**ii.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate will amend the PHI it maintains (or which is maintained by its Contractors) in Designated Record Sets to enable the Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526.

**iii.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, then, upon a request from Covered Entity, or an individual, for an accounting of disclosures of PHI, Business Associate (or its Contractors as applicable) will make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under 45 C.F.R. § 164.528 and 42 U.S.C. § 17935(c).

**h. Notification regarding Breaches of Unsecured PHI.** Following Business Associate’s discovery of a Breach of Unsecured Protected Health Information, Business Associate will notify Covered Entity of such Breach in accordance with §§ 164.410 and 164.412 of the Regulations.

### **4. Permitted uses and disclosures.**

**a.** Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

b. Except as expressly limited in this Attachment, Business Associate disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that with respect to any such Disclosure either: (a) the Disclosure is Required by Law; or (b) Business Associate obtains reasonable assurances from the person to whom the PHI is to be Disclosed that such person will hold the PHI in confidence and will not use and further disclose such PHI except as Required by Law and for the purpose(s) for which it was Disclosed by Business Associate to such person, and that such person will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

c. Except as expressly limited in this Attachment, Business Associate may use PHI for Data Aggregation services to Covered Entity as permitted by § 164.504(e)(2)(i)(B) of the Regulation.

d. Use PHI for purposes of de-identification of the PHI.

e. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1) of the Regulations.

#### 5. Term and Termination.

a. **Term.** This BAA is effective as of the Effective Date and will continue until the date that all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is infeasible to return or destroy the PHI, Business Associate will limit further uses disclosures of such PHI and extend the protections of this Attachment to such PHI for so long as Business Associate maintains such PHI.

b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach or violation of this Attachment

by Business Associate, Covered Entity will notify Business Associate of the breach in writing, and provide an opportunity for Business Associate to cure the breach or end the violation within thirty (30) business days of such notification. If Business Associate fails to cure the breach or end the violation within such time period, Covered Entity may immediately terminate this Attachment upon written notice to Business Associate.

#### 6. Miscellaneous.

a. **Changes.** The parties agree in to negotiate mutually acceptable changes to the terms of this Attachment if the Regulations are amended, or are reasonably anticipated to change, in a manner that would alter the obligations of Business Associate.

b. **Compliance with HIPAA.** If the terms of this Attachment are not clear in satisfying the parties' intention to comply with the applicable requirements of HIPAA, the HIPAA Regulations, or the HITECH Act, then the terms will be construed so as to permit compliance with the applicable requirements of HIPAA, the HIPAA Regulations, and the HITECH Act by both parties.

c. **Independent.** Business Associate and its Contractors are independent contractors and not agents of Covered Entity. Nothing in this Agreement or this Attachment is intended to give Business Associate or its Contractors any control over the business operations of Covered Entity.

d. **Third Party Beneficiaries.** Nothing expressed or implied in this Attachment or the Agreement is intended to confer, nor will it confer, upon any person any rights, remedies, obligations or liabilities other than those explicitly detailed in this Attachment or in the Agreement.

e. **Conflicts.** This Attachment is attached to and made part of the Agreement. If a provision of this Attachment directly conflicts with another provision of the Agreement, the provision of this Attachment controls subject to subsection (b) ("Compliance with HIPAA").

## Attachment VI – Exhibit A - BAA Definitions

The following capitalized terms used in Attachment VI will have the associated set forth below.

**Breach** has the meaning set forth in the Privacy Rule (*i.e.*, 45 CFR § 164.402).

**Business Associate** means Forte.

**Covered Entity** means the Customer.

**Designated Record Set** has the meaning given such term under 45 C.F.R. § 164.501.

**Disclose or Disclosure** means with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside of Business Associate or to other persons, other than members of its Workforce, as set forth in 45 C.F.R. § 160.103.

**Electronic PHI or e-PHI** means PHI that is transmitted or maintained in electronic media, as set forth in 45 C.F.R. § 160.103.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91), as amended.



**HIPAA Regulations**

means the regulations promulgated under HIPAA by the Secretary including the regulations codified at 45 C.F.R. Parts 160 and 164.

**HITECH Act**

means the Health Information Technology for Economic and Clinical Health Act (Public Law 111-005).

**Individual**

has the meaning as the term "individual" in § 160.103 of the Regulations and shall include a person who qualifies as a personal representative in accordance with § 164.502(g) of the Regulations.

**Privacy Rule**

means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended from time to time.

**Protected Health Information or PHI**

means any information, whether oral or recorded in any form or medium, that: (a) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; (b) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (c) shall have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103. Protected Health Information includes e-PHI.

**Required by Law**

has the same meaning as the term "required by law" in the HIPAA Regulations (*i.e.*, 45 C.F.R. § 164.103).

**Secretary**

means the Secretary of the U.S. Department of Health and Human Services.

**Security Incident**

has the meaning set forth in the HIPAA Regulations (*i.e.*, 45 C.F.R. § 164.304).

**Subcontractor**

has the meaning set forth in the HIPAA Regulations (*i.e.*, 45 C.F.R. § 160.103).



# Attachment VII - General Terms & Conditions

The terms and conditions of this attachment apply to all products and services ordered by Customer, except to the extent that any other Attachment conflicts with these terms, in which case those terms apply.

**1. Definitions.** The capitalized terms used in this Agreement have the meanings set forth on [Exhibit A](#), the “Glossary,” unless otherwise defined.

## 2. Payment terms.

a. **In general.** Customer will pay the fees as set forth on the applicable Order Form. All amounts to be paid by Customer are due and payable within thirty days of the invoice date. If Customer owes Forte any Uncontested Amount after the due date, then the Uncontested Amount will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law. In case of Services, Forte reserves the right to suspend Services until all Uncontested Amounts are paid in full.

b. **Annual Payments.** Customer shall make Annual Payments for the term of this Agreement. Unless other provided in the Order Form or Pricing Proposal, for the first Annual Payment for a Service or Software is due as of the Effective Date and each subsequent Annual Payment due on the anniversary of the Effective Date for the term of this Agreement.

c. **Taxes.** Fees and other amounts on an Order Form will not include taxes. Customer is solely responsible for all sales, use and excise taxes, other than Forte’s income and payroll taxes. If Customer is exempt from taxes, Customer is responsible for providing Forte with valid tax-exempt certificates prior to signing the applicable Order Form.

d. **Expenses.** Customer will reimburse Forte for all Expenses reasonably incurred in connection with this Agreement.

e. **Orders.** Customer may request additional Software and Services (including Hosting Services or Subscription Services) through use of an Order Form. Forte may rely on a properly executed Order Form signed by a Customer employee for purposes of commencing Services or licensing Software and authority to agree to pay for the same. As reasonable, new orders for Annual Payments will be pro-rated to match Customer’s existing Annual Payment schedule with the pro-rated amount due within thirty days of the invoice date.

## 3. Credits.

a. **Requests.** To receive a Credit, Customer must submit a request to Forte entitled ‘Service Credit’ using Forte’s support ticketing system within one month of date in which the Credit is earned. If the Customer fails to do so, it will forfeit the right to receive the Credit. If Forte approves the Credit, then Forte will apply the Credit against future Support Services to be paid by the Customer.

b. **Purpose.** Forte issues Credits as compensation to Customer and Credits do not constitute penalties. Credits are a reasonable estimate of the anticipated or actual harm that might arise from failing to meet the applicable service level commitment. The Credits represent Customer’s sole remedy, and Forte’s sole liability, for any failure to meet the applicable service level commitment.

c. **Issuance.** In an invoice for which a Credit is owed, Forte will include a written acknowledgment setting forth all Credits to which Customer is entitled. Credits are only applied towards Customer’s next invoice for the fees for which the Credits were accrued. If Customer does not renew the applicable Services, or if the Services are terminated before a Credit can be applied, Forte will pay Customer fifty percent (50%) of the Credit. Credits issued for any period will not exceed twenty percent (20%) of the total Attributable Fees payable by Customer during the applicable Term (e.g., annual total for Attributed Support Fees).

## 4. Intellectual property rights.

a. **Reservation of rights.** Software and Hosted Services are licensed, not sold. The Software and Hosted Services are the sole and exclusive property of Forte or its licensors, subject only to the licenses expressly granted under this Agreement, and Customer acquires no ownership rights in any Software or Hosted Services under this Agreement.

b. **Documentation.** Customer may make, for its internal use in conjunction with the use of the Software or Hosted Services, a reasonable number of printed copies of the Documentation, in electronic and/or hard copy format. Customer must retain all copyright and other proprietary notices in the Documentation on all copies Customer produces. Customer will not remove, destroy, or obscure any proprietary markings or proprietary legends placed on or contained within the Software or any other Forte Materials.

c. **Feedback.** If Customer provides any input, comments or suggestions regarding Forte’s business and technology direction or the possible creation, modification, correction, improvement or enhancement of the Software or Services (collectively “Feedback”), then Customer grants to Forte a non-exclusive, perpetual, irrevocable, worldwide, non-transferable (except to Forte’s Affiliates), royalty-free license, with the right to sublicense, under applicable laws to use, publish, modify, and otherwise benefit from Feedback in any manner and via any media.

## 5. Warranty.

a. **By Forte for Software.** Forte warrants that for a period of ninety days from the Effective Date (the “Software Warranty Period”), the Software will substantially conform to the Documentation as of the Effective Date, when installed,

operated and used as recommended in the Documentation and in accordance with this Agreement. If, during the Software Warranty Period, Customer determines that the Software does not substantially conform to such Documentation, then Customer's sole remedy is, at Forte's option, either: (a) return the license fees paid for the Software or, (b) repair or replace the Software.

b. **By Forte for Services.** Forte warrants for a period of thirty days from the performance of Services (the "Services Warranty Period") that (i) Forte will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner; (ii) Forte will devote adequate resources to meet its obligations under the applicable Statement of Work or other applicable exhibit; and (iii) the applicable Services and Work Product will substantially conform with the applicable Statement of Work or other applicable exhibit. If, during the Services Warranty Period, Customer determines that Forte has breached any of the foregoing warranties, then Customer's sole remedy is for Forte to use reasonable efforts to cure the breach within a reasonable period of time at no additional cost to Customer. For purposes of this subsection, Services includes Subscription Services.

c. **Hosted Services.** Notwithstanding the warranties of subsections (a) and (b), Forte's sole and exclusive obligations with respect to use of, access to, and performance of the Hosted Services is set forth in the applicable Attachment.

d. **Mutual.** Each party represents and warrants to the other party that (i) 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; (b) 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; (c) 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 (d) 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.

e. **DISCLAIMER.** Except as expressly set forth in the applicable Attachment, the Software and Services are supplied "as is," "where is," "with all faults," and without warranty of any kind. Forte expressly disclaims all other warranties, express and implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, quality of information, quiet enjoyment, title, and non-infringement. Forte does not warrant that the Software or Services will meet Customer's requirements or that the Software or Services will be error-free or that defects in the Software or Services will be corrected. No oral or written information or advice given by Forte or its authorized

representatives will create a warranty or in any way increase the scope of Forte's obligations under this agreement.

## 6. Indemnification.

a. **Intellectual property.** Forte will defend Customer against claims brought against Customer and its Affiliates by any third party alleging that Customer and its Affiliates' use of the Software or Services infringes or misappropriates a United States patent claim, copyright, or trade secret. Forte will have sole control over the defense of such claims and will be solely responsible for any costs and expenses (including attorney's fees) of the defense. Forte will indemnify Customer and its Affiliates against all damages finally awarded with respect to claims under this subsection. Forte's obligations under this Section will not apply to the extent a claim results from (i) Customer's breach of the license or use restrictions or any other misuse of the Software or Services; (ii) the use of the Software or Services in conjunction with any product or service not provided by Forte; (iii) modifications to the Software or Services by Customer or its Affiliates or by anyone other than Forte; (iv) Customer Data; or (v) failure to use an Upgrade made available to Customer that would have avoided infringement.

b. **By Customer.** Except for those claims covered by subsection (a), Customer will defend Forte against claims brought against Forte and its Affiliates and Contractors by any third party related to Customer Data or Customer's breach of the Agreement. Customer will indemnify Forte against all damages finally awarded against Forte or its Affiliates and Contractors with respect to claims under this subsection.

c. **Procedure.** The party against whom a claim under this Section is brought will timely notify the other party in writing of the claim, must reasonably cooperate in the defense of the claim, and may participate (at its own expense) through counsel of its own and reasonably acceptable to the other party. The party obligated to defend the claim has the right to fully control the defense and settlement of the claim. Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

d. **Replacement.** Should the Software or Services, as delivered by Forte, become or, in Forte's opinion, be likely to become, the subject of a claim of infringement, Forte may, at its option and expense either (a) procure for the right for Customer to continue to using the Software or Services; (b) replace or modify the Software or Services, and/or modify its use to make its use non-infringing, without loss of material functionality; or (c) if neither option is commercially reasonable in Forte's determination, then terminate the Agreement with respect to the applicable Software or Services.

## 7. Limitation of Liability.

a. **Damages.** Unless expressly provided in any other part of this Agreement, under no circumstances will either party be liable to the other for any special, incidental consequential or indirect damages (including, without limitation, damages for loss of business, loss of profits, business interruption, or loss of data) arising out of or connected in any way with this Agreement, the Services, or the Software, even if the other party has been advised of the possibility of such damages.

b. **Allocation of risk.** This Agreement allocates the risks between Forte and Customer. The fees for the Services and Software reflect this allocation. Accordingly, the total liability of Forte to Customer for all damages, losses, and causes of action (whether in contract, tort (including negligence), or otherwise) will not exceed the total fees paid by Customer during the six (6) months immediately preceding the event giving rise to liability for the Software or Services (including the Subscription Services and Hosting Services) giving rise to such liability, and Forte's total aggregate liability will not exceed the total amount paid by Customer to Forte for the applicable Software or Services.

c. **Exceptions.** Notwithstanding the preceding, the following exception apply: (i) with respect to Forte's intellectual property indemnification, the provisions of Section 5(a) ("Intellectual Property") and 5(d) ("Replacement") state the entire liability and obligations of Forte and the exclusive remedy of Customer and any other entity, with respect to any alleged infringement or misappropriation of intellectual property rights; (ii) a party's obligation to pay the other party; (iii) any limitation of liability in this Agreement (including any Attachment or exhibit) does not apply to any infringement or misappropriation of Forte's intellectual property rights including any patent, copyright, trade secret or a party's willful misconduct.

d. **Timing of actions.** Neither party will commence any claim in a court of law (or in arbitration or before any administrative agency) for any matter arising out of or relating to this Agreement, the Services, the Software, or any matter more than twelve (12) months after the date that the applicable cause of action first arises.

e. **Insurance.** At all times during the Term, Forte will use reasonable efforts to maintain commercially reasonable insurance coverage appropriate for the Software and Services licensed and provided under this Agreement.

## 8. Confidentiality.

a. **In general.** Each party will take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (i) taken by the disclosing party to protect its own confidential information and (ii) which the disclosing party or its authorized representative may reasonably request from time to time. Neither party will remove or obscure any of the confidentiality or proprietary

notice placed on the Confidential Information disclosed by the disclosing party. The placement of copyright notices on confidential information will not constitute publication or otherwise impair their confidential nature of such information.

b. **Software and Services.** Customer acknowledges that the Software (whether in Object Code or Source Code) and Hosting Services are the confidential and proprietary information of Forte. Customer will not permit any third party access to, in any manner, the Software or Services except as expressly provided under this Agreement. In any case a third party is permitted access to the Software or Services, Customer and the third party must have a signed confidentiality obligation that is at least as restrictive and protective of Forte's Confidential Information as these terms.

c. **Protected Health Information.** Notwithstanding subsection (a), the parties agree to the terms of the Business Associate Agreement attached as Attachment VI govern the use and disclosure of Protected Health Information.

d. **Exceptions.** Neither party shall have any obligation with respect to Confidential Information which: (1) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (2) was previously known to the receiving party or rightly received by the receiving party from a third party; (3) is independently developed by the receiving party without reference to information derived from the other party; or (4) is subject to disclosure under court order or other lawful process. In the case of (4), if Customer is required to disclose any Forte Confidential Information, Customer shall first notify Forte of such obligation to do so prior to disclosing any information. In addition, Customer Confidential Information does not include any technical or software information, including that of any third party, unless Forte expressly agrees that it requires that information.

## 9. Term and termination.

a. **Term.** This Agreement commences on the Effective Date and will continue until terminated as provided in this section. The agreement is written in master form and termination or expiration of any specific Software or Service offering does not terminate this Agreement, unless expressly provided.

b. **Termination for cause.** A party may terminate this Agreement, in whole or in part, including any Order Forms or SOWs if the other party materially breaches this Agreement, and the other party does not cure such material breach within thirty days after receipt of written notice of such breach. In addition, a party may terminate this Agreement immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the other party, appointment of a trustee or receiver for the other party's property or business, or any assignment, reorganization or arrangement by the other party for the benefit of its creditors.

c. **Effect of termination or expiration.** Upon expiration or termination of this Agreement, all of Customer's licenses to use the Software and Hosted Services, and all other rights, services and licenses granted by Forte to Customer cease immediately (except for those rights, licenses and obligations that are expressly stated to survive termination of this Agreement).

**10. Notices.** All notices, requests, demands, consents or other communications given under this Agreement must be in writing and given when delivered to the address set forth on the first page of this Agreement. Except for formal notices of termination, material breach, or indemnification, a party may send the notice by email to the other party.

**11. Audit Rights.** During the Term, and for a period of two (2) years following Customer's last use of the applicable Software or Service, Forte (or a third-party auditor selected by Forte) may audit Customer's use of the Software or Services as well as Customer's compliance with the terms of this Agreement. If an audit reveals that Customer underpaid any fees or charges, Customer will immediately pay those fees, and if the underpayment was greater than five percent (5%) of the amount owing to Forte for the audit period, Customer will reimburse Forte for reasonable costs incurred conducting the audit.

**12. Governing law.** The laws of the State of Wisconsin govern the validity, construction and performance of this Agreement and the relationship of the parties without regard to its conflict of laws principles. The parties consent to exclusive jurisdiction of the Federal and state courts located in Dane County, Wisconsin for all disputes arising under or related to this Agreement.

**13. Assignment.** Neither party may assign this Agreement without the written consent of the other party. Notwithstanding the foregoing, either party may assign this agreement to an Affiliate or in the event of a merger, acquisition or sale of all or substantially all its assets. Customer acknowledges that any assignment or transfer of this Agreement to another entity may require an amendment to alter license volumes or scope.

**14. Subcontractors.** Forte may perform the work with its own employees or use Contractors to provide certain of the Services. In such event, Forte will remain responsible to Customer for work performed under this Agreement by such Contractors.

**15. Relationship.** Nothing in this Agreement is intended to create a partnership, joint venture, or agency relationship between the parties, and their relationship is and will remain

that of independent parties without the power or authority to bind the other party in any manner to any third party.

**16. Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor will it confer, upon any person any rights, remedies, obligations or liabilities other than those explicitly detailed in this Attachment or in the Agreement.

**17. Force Majeure.** Except for a party's payment obligations, neither party will be liable to the other for any failure or delay in performance under this Agreement which is due to any Force Majeure Event.

**18. Export control and compliance with laws.** Customer is responsible for complying with all applicable laws, rules, and regulations applicable to Customer's access to and use of the Software and Hosted Services. Customer may not use the Software or Hosted Services for any unlawful purpose and will not export (directly or indirectly), or provide access to or use of, the Software or Hosted Services to any country or person or entity for which the United States requires an export license or other approval.

**19. U.S. Government Restricted Rights.** The Software, Hosted Services, Hosted Software, and Subscription Services ("**Covered Software**") licensed or purchased under this Agreement are commercial items, as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of commercial computer software (as that term is defined at 48 C.F.R. 252.227-7014(a)(1)) and commercial computer software documentation as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all United States government end users acquire Covered Software with only those rights set forth herein. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFAR, or other clause or provision that addresses United States Federal government rights in computer software under this Agreement.

**20. Entire agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and terminates and supersedes all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, agreements and communications, whether oral or written, between the parties relating to the subject matter of this Agreement and all past courses of dealing or industry custom. This Agreement further contemplates that the parties may later sign additional Order Forms and Statements of Work which will become part of this Agreement when executed. Nothing in this Agreement is intended to require a party to purchase, license, provide or offer any additional products, software or services.



## Attachment VII - Exhibit A - Glossary

This Glossary is part of the Forte General Terms and Conditions and defines the capitalized terms used in the Agreement to have their associated definitions:

- Affiliate** means any entity that controls, or is controlled by, or is under common control with the applicable party. For purposes of this definition, the term “control” means the power (or, as applicable, the possession or exercise of the power) to direct, or cause the direction of, the management, governance, or policies of a given entity, directly or indirectly, through any applicable means (whether through the legal, beneficial, or equitable ownership, of more than fifty percent (50%) of the aggregate of all voting or equity interests or securities of such entity, through partnership, or through some other form of ownership interest, by contract, or other applicable legal document, or otherwise).
- Agreement** has the meaning specified on the first page as may be amended from time to time by mutual agreement. The terms of a Customer purchase order or acknowledgement will not amend or alter the terms of the Agreement even though Forte may have accepted or signed such documents.
- Annual Payments** means the amount of fees and other amounts owing to Forte for Software and Services and invoiced by Forte and due on each anniversary of the Effective Date. Forte may increase Annual Payments by two percent (2%) annually.
- Attachment** means any of the attached documents to the Agreement.
- Attributable Fee** means either Attributable Hosting Fees or Attributed Support Fees.
- Attributable Hosting Fees** means (i) if a Pricing Proposal or Order Form specifies, the “Hosting Service Fees” for the applicable Hosted Software; or (ii) if no “Hosting Service Fees” are specified, then twenty percent of the Annual Payment for the applicable Hosted Software, in each case divided by twelve.
- Attributable Support Fees** means (i) if a Pricing Proposal or Order Form specifies, the “Support Fees” for the applicable Software; or (ii) if no “Support Fees” are specified, then twenty percent of the Annual Payment for the applicable Software, in each case divided by twelve.
- Authorized User** means an employee of Customer, Customer Affiliate, or Research Affiliate as well as any other person who is permitted to use the Software or access the Hosted Services under this Agreement.
- Confidential Information** means with respect to a party hereto, means the non-public information and materials which (a) give a party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; (b) are treated as confidential under the terms of this Agreement; or (c) which are either (i) marked “confidential,” “restricted,” or “proprietary information” or other similar marking, (ii) known by the parties to be considered confidential and proprietary or (iii) should reasonably be assumed to be confidential and proprietary from all the relevant circumstances. Confidential Information includes the terms of this Agreement, including pricing and licensing information.
- Contractors** means subcontractors, independent contractors, consultants and/or any other third parties engaged by the applicable party.
- Credit** means an amount that will apply to a subsequent invoice for Software or Service.
- Customer** means the entity identified on the first page of the Agreement.
- Customer Data** means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Software or Hosted Services.
- De-identified Data** means Customer Data that (i) does not contain any Customer Confidential Information; (ii) does not identify and cannot be reasonably used to identify Customer or Customer’s Affiliates or any individual person; and (iii) does not identify any activities or behaviors of Customer

**Documentation**

means the then-current user's guides and related software documentation for the applicable Software made generally available by Forte to its customers, as updated from time-to-time by Forte.

**Effective Date**

has the meaning set forth on signature page.

**Error**

means any failure of the Software to operate in all material respects in accordance with the Documentation, including any problem, failure or error referred to on the applicable support or maintenance Attachment.

**Expenses**

means travel expenses.

**Forte**

means Forte Research Systems and its Affiliates unless otherwise indicated.

**Force Majeure**

means any event beyond the reasonable control of the applicable party, including, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, acts of God, export control regulations, laws, judgments, or government instructions.

**Forte Materials**

means the Documentation and any other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Forte in connection with this Agreement. For the avoidance of doubt, Forte Materials do not include Customer Data.

**Glossary**

means this Exhibit.

**Hosted Services**

means the hosting, management, and operation of Hosted Software by Forte in accordance with the terms of Attachment V ("Hosted Services Attachment").

**Hosted Software**

means the Software indicated as "Hosted" on the applicable Pricing Proposal or Order Form.

**Interface Bundle**

means the standard interfaces that may be optionally utilized in conjunction with the Software as set forth on the Pricing Proposal, including any enhancements to such interfaces as well as future standard interfaces developed by Forte during the Term. The Interface Bundle does (and will) not include any custom interfaces required or requested by Customer.

**Non-Production Environment**

means an environment wherein the Software may be tested or used for practice purposes, but is not a "live" Production Environment.

**Object Code**

means computer programs assembled or compiled, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse compiling, or reverse-engineering.

**Order Form**

means a document referencing this Agreement issued by Forte to Customer for new Software or Services, including the expansion of any use of current Software or Services.

**Permitted Use**

means use for the Software in connection with Authorized User's internal business purposes and excluding any restricted uses specified in Attachment I, Section 4 (Software Use Restrictions).

**Pricing Proposal**

means an exhibit or Order Form referencing this Agreement setting forth Software and Services licensed or purchased from Forte.

**Production Environment**

means the active, real-time environment running the Software for Customer's operations.

**Protected Health Information**

has the meaning set forth in Attachment VI ("Business Associate Agreement").

**Research Affiliate**

means those research sites that have entered into or who will enter into a written research affiliation agreement (or similar agreement to perform research for or on behalf of Customer) with Customer.



<b>Services</b>	means the software implementation, training and other professional services set forth in the Pricing Proposal. Unless otherwise indicated, Services excludes Subscription Services and Hosting Services.	<b>Uncontested Amount</b>	means any invoiced amount for which there is no good faith dispute. Customer may dispute a charge by providing written notice indicating the nature of the dispute prior to the due date so long as Customer has paid all undisputed amounts.
<b>Software</b>	means the applicable Forte software programs listed on the Pricing Proposal together with the Interface Bundle and any other software items described on the Pricing Proposal and the associated Documentation. Software includes Upgrades provided by Forte during the Term.	<b>Upgrade</b>	means a subsequent release of the Software which is made generally available to Forte's customers similarly situated to Customer under maintenance and support. Upgrades, once delivered to Customer, are treated as Software under the terms of this Agreement.
<b>Source Code</b>	means computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.	<b>Warranty Period</b>	has the meaning set forth in the applicable warranty section.
<b>Statement of Work or SOW</b>	means the one or more description of Services entered into by the parties and referencing this Agreement. A Statement of Work may also be referred to as a " <b>SOW</b> ."	<b>Work Product</b>	means the work product, documents, materials, and other deliverables developed by Forte in performance of the Services.
<b>Subscription Services</b>	means those services under the subscription services heading of the applicable Pricing Proposal or Order Form and subject to the terms of Attachment V.		
<b>Systems</b>	means a Party's information technology infrastructure, including computers, software, hardware, databases, and networks whether owned or operated by the Party or by a Contractor on behalf of the Party.		
<b>Term</b>	means duration of the applicable Software license or the duration of performance of Services as specified on the applicable Order Form or Pricing Proposal.		
<b>Third Party Software</b>	means any software products or content licensed to Customer under this Agreement designed, developed, or owned by a company other than Forte or a Forte Affiliate and provided to Customer under this Agreement.		