

THIS AGREEMENT

FORTEK Ltd (“**Disclosing Party**”) extends limited user access to the evaluation instance of its software known as Foresite SPA (“**Software**”) to you (“**Receiving Party**”) for the purpose assessing its commercial suitability for deployment in your business with the intention of subscribing to use the Software (“**Purpose**”). During the course of the evaluation period Fortek wishes to protect its proprietary and confidential information and that of any other persons to whom it owes a duty of confidence.

By applying to Fortek Ltd for access to the evaluation instance of the Software, the Receiving Party agrees to be bound by the terms of this Non-Disclosure Agreement.

1 Definition

1.1 In this Agreement:

“**Confidential Information**” means any commercial, technical and other information of whatever nature and in whatever form, of the Disclosing Party including, without limitation, information and documentation in or relating to the Software (including, without limitation, the concept for and design and functionality of such software, the data structures, methods of calculation, algorithms and output designs) or any other software, data and designs or any other software, pricing, business procedures, know-how and trade secrets whether such information is disclosed or supplied by the Disclosing Party or its directors, employees, representatives, officers, agents or advisors (whether before or after the date of this Agreement) or which directly or indirectly comes to the attention of the Receiving Party.

2 Confidentiality

2.1 In consideration of the Disclosing Party agreeing to supply Confidential Information to the Receiving Party under the terms of this Agreement, the Receiving Party shall at any time after the date of this Agreement:

- 2.1.1 treat all Confidential Information as confidential by ensuring or procuring that, whilst in the Receiving Party’s possession or control, the Confidential Information shall be maintained reasonably secure. This shall include, without limitation ensuring that access to the Confidential Information on such personal computer is controlled by use of a password system;
- 2.1.2 not divulge or communicate or, through any failure to exercise due care and diligence, cause any unauthorised disclosure of the Confidential Information in whole or in part to any person, company, business entity or other organisation;
- 2.1.3 copy the Confidential Information only to the extent strictly required for the Purpose; and
- 2.1.4 not use the Confidential Information or any part of it for the purpose of its own business or undertaking or for any purpose other than the Purpose.

3 Limitations on obligation of confidentiality

3.1 The restrictions set out in clause 2.1 shall not apply to any Confidential Information which:

- 3.1.1 can be demonstrated by documentary evidence to have been at the time of disclosure already known to or in the possession of the Receiving Party free from obligation of confidence or any other restriction as to use or disclosure;
- 3.1.2 is lawfully and without any restriction as to its use or disclosure subsequently received by the Receiving Party from a third party, who does not owe any duty of confidence to the Disclosing Party;
- 3.1.3 shall be already, or subsequently become, published or available to the public generally otherwise than through a breach of a duty of confidentiality owed to the Disclosing Party; or
- 3.1.4 is produced or disclosed pursuant to applicable laws, regulations or a court order, provided that the Receiving Party has given the Disclosing Party reasonable notice in writing of such required production or disclosure so that the Disclosing Party has had an

opportunity to defend or apply to limit or protect such Confidential Information from production or disclosure.

3.2 Confidential Information shall not be exempted under clause 3.1 from restriction under this Agreement by reason only that:

3.2.1 some or all of the features of the Confidential Information (but not the combination and principle of it) are or become published or available to the public generally or are known to or in the possession of or are subsequently received by the Receiving Party; or

3.2.2 such information could be derived or obtained from information which is or becomes published or available to the public generally or is in the possession of or becomes available to the Receiving Party if so to obtain or derive it would require substantial skill, labour or expense.

4 Permitted disclosure

4.1 The Receiving Party may disclose any Confidential Information received to such of its officers or employees whose participation in the Purpose is essential and who are informed of the confidential nature of the Confidential Information. The Receiving Party shall give all reasonable assistance to the Disclosing Party to enable the Disclosing Party to prevent any improper use of the Confidential Information by any person to whom the Receiving Party is permitted to disclose the information pursuant to this clause 4.1.

5 Ownership and cessation of use

5.1 Nothing contained in this Agreement or any disclosure of Confidential Information pursuant to it shall constitute the grant of any licence or rights of ownership or any other rights in respect of the Confidential Information other than for the Purpose.

6 Indemnity

6.1 The Receiving Party shall fully indemnify and keep the Disclosing Party indemnified against all costs, actions, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with the Receiving Party's default or breach of its obligations under the terms of this Agreement.

6.2 The Confidential Information of the Disclosing Party is, by its nature, valuable proprietary commercial information, the misuse or unauthorised disclosure of which would be likely to cause the Disclosing Party considerable and uncompensatable damage and accordingly the Receiving Party acknowledges and agrees that, without prejudice to clause 6.1 or to any other rights or remedies that the Disclosing Party may have under this Agreement, damages alone may not be an adequate remedy for breach of this Agreement and that accordingly the Disclosing Party shall be entitled, without proof of special damages, to the remedies of injunction, specific performance and other equitable relief which may be appropriate for any threatened or actual breach by the Receiving Party of the terms of this Agreement.

7 No obligation

7.1 The Receiving Party acknowledges and confirms that this Agreement and the disclosure of Confidential Information pursuant to it shall not, save as set out in this Agreement, place the Disclosing Party under any obligation to enter into any further agreement(s).

8 Disclaimer

8.1 The Confidential Information will be supplied solely to assist the Receiving Party to carry out the Purpose, and will be accepted by the Receiving Party on the basis that although the Disclosing Party has made reasonable efforts to ensure that the Confidential Information will be helpful, the Disclosing Party gives no assurance as to its accuracy, completeness or adequacy for that purpose: the Receiving Party will rely exclusively on the results of its own investigation together with such express warranties or indemnities (if any) as may be given in any agreement made following the supply of the Confidential Information pursuant to this Agreement. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

9 General

9.1 The failure or delay of the Disclosing Party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times

thereafter. No single or partial exercise of any such right by the Disclosing Party shall preclude any further exercise of such right.

- 9.2 This Agreement constitutes the entire understanding between the parties with respect to its subject matter and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it.
- 9.3 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 9.4 This Agreement shall be binding on and endure to the benefit of each of the parties and their successors and assigns provided that neither party may assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other.
- 9.5 No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 9.6 If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 9.7 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post or sent by fax (provided that any such notice sent by fax shall be confirmed by letter posted within twelve hours) to the address of the other party set out in this Agreement. Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of two business days after posting; and if sent by fax - at 9.00 am on the next business day after the fax was dispatched.
- 9.8 This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.