



## FORESCOUT TECHNOLOGIES, INC. END USER LICENSE AGREEMENT TERMS AND CONDITIONS

### NOTE REGARDING EVALUATION PRODUCTS AND BETA PRODUCTS: THIS END USER LICENSE AGREEMENT APPLIES ONLY TO GENERAL AVAILABILITY PRODUCTS.

- IF YOU HAVE ORDERED ANY **EVALUATION PRODUCTS**, THE TERMS APPLICABLE TO YOUR USE OF SUCH EVALUATION PRODUCTS ARE SET FORTH AT <http://www.forescout.com/evaluation-license/>
- IF YOU HAVE ORDERED ANY **BETA PRODUCTS**, THE TERMS APPLICABLE TO YOUR USE OF SUCH BETA PRODUCTS ARE SET FORTH AT <http://www.forescout.com/beta-test-agreement/>

This End User License Agreement is a legal agreement made between ForeScout Technologies, Inc. ("ForeScout") and the entity that has procured the Products, ActiveCare and/or Professional Services for use as an end user ("Customer") or any of Customer's Affiliates that issue an Order (as defined below). This End User License Agreement consists of the terms and conditions set forth below, any other exhibits or attachments referenced hereto, and each accepted Order or Statement of Work referenced hereto or subsequently signed by the Parties, all of which are incorporated herein by this reference (collectively, the "EULA" or "Agreement"). If Customer purchases the Products, ActiveCare or Professional Services for use by its Affiliate(s), Customer will ensure that such Affiliate(s) complies with the terms and conditions of this Agreement. Customer's standard terms and conditions of purchase, purchase order or other documents are for Customer's convenience only and any terms set forth therein that are inconsistent with or add to the terms and conditions set forth in this Agreement shall not be binding on ForeScout, unless otherwise agreed by the parties in writing, and are hereby rejected. ForeScout and Customer may also be referred to individually as "Party" or collectively as the "Parties" throughout this Agreement.

#### 1. DEFINITIONS.

"ActiveCare" means ForeScout's support and maintenance services offerings as described here <https://forescout.com/company/legal/activecare-maintenance-and-support-policy/>.

"Affiliate" means an entity that controls (i.e., parent), is controlled by (i.e., subsidiary), or is under common control with (i.e., sister) a Party to this Agreement. The term "control" as used in this definition shall mean possession, directly or indirectly of at least fifty percent (50%) of the voting securities of another entity (or other comparable interest for an entity other than a corporation), or the power to direct or cause the direction of the management or policies of an entity whether through ownership of securities, by contract or otherwise.

"Base Modules" means the software modules that are included in the CounterACT® software without any additional charge to Customer.

"Documentation" means the technical documentation and specifications applicable to any given Product, excluding marketing collateral, such as datasheets and solution briefs.

"Endpoints" include, but are not limited to, user endpoints (e.g., laptops, tablets and smartphones), network infrastructure devices (e.g., switches, routers and access points), non-user devices (e.g., printers, IP phones, security/medical/manufacturing equipment), and virtual machines. For purposes of clarity, an Endpoint may include multiple MAC addresses and/or IP addresses. Endpoint information is retained by the Products, whether the Endpoint is online or offline, from initial detection until the information is purged, based on policies defined by Customer. The terms "endpoint" or "device" used in any documentation provided by ForeScout shall mean an Endpoint for the purposes of the Endpoint Count.

"Endpoint Count" is the maximum number of Endpoints monitored by the Products and licensed to Customer, as specified in the Order, using either a MAC address and/or IP address, whether onsite, offsite or detected by the Products via third-party integrations.

"Extended Module(s)" means the software modules purchased by Customer at additional cost to provide functionality beyond the base CounterACT software.

"Graphical User Interface" or "GUI" means the software program which provides the interface for Customer to operate the Products.

"Hardware" means the hardware appliance on which the Software is installed.

"Material Capacity Breach" means exceeding the permitted Endpoint Count by more than 5% on average in any consecutive thirty (30) day period during the term of this Agreement.

"Module(s)" means the Base Modules and Extended Modules.

"Order" means the applicable ordering document, acceptable to ForeScout, issued by (as applicable) Customer, authorized ForeScout reseller, or authorized ForeScout distributor that refers to this Agreement, and that describes in greater detail Customer's order-specific information, including, quantity, charges, billing information, pricing, payment, shipping information and the Products, Professional Services and ActiveCare services ordered.

"Product" means the Hardware and the Software that Customer has ordered, and ForeScout has agreed to provide, as indicated on the applicable Order.

"Professional Services" means the ForeScout implementation, configuration, consulting, or training services to be provided to Customer under any applicable SOW or Datasheet.

"Software" means the proprietary software programs developed by, ForeScout in object code form, as well as any modifications, error corrections, bug fixes, or other updates thereto. "Software" also includes the proprietary GUI, Modules, and associated Documentation developed by ForeScout.

#### 2. GRANT OF LICENSE; RESERVATION OF RIGHTS.

**2.1. License.** Provided Customer is in compliance with the terms and conditions provided herein including, without limitation, any Order executed hereunder, ForeScout hereby grants Customer a perpetual, nonexclusive, limited license, solely for Customer's internal business operations and solely to support the Endpoint Count and the license functionality specified in the applicable Order accepted by ForeScout. Subject to Customer's cumulative Endpoint Count restrictions, Customer may (i) use one (1) copy of the Software as installed on Hardware provided hereunder, (ii) download electronically a reasonable number of copies of the Software for use with virtual appliances, and (iii) download and use as many copies of the GUI and the Documentation as necessary to support Customer's use of the Products. Customer is allowed to make a reasonable number of copies of the Software for backup purposes, provided that ForeScout's proprietary notices are contained in such copies.

**2.2. Reservation of Rights.** Except for the limited license(s) set forth herein, ForeScout, and/or its licensors, own all title and proprietary rights, including without restriction all intellectual property rights, in and to the Software and Documentation, all copies thereof, and any modifications or derivatives made by Customer to the Software in violation of this Agreement, all of which contain valuable trade secrets of ForeScout and/or its licensors. The use license described herein is not a sale of the Software or any copy of it, nor is it a waiver of the rights of ForeScout under U.S. copyright laws or any other federal, state, or other applicable laws.

**3. LICENSE RESTRICTIONS.** Any license granted hereunder is for Customer's internal use only. Except as expressly provided in this Agreement, Customer may not, and may not permit any third party to, use the Software for rental, timesharing, subscription service, hosting or outsourcing or to sublicense, lend, rent, lease or make the Software available to any third party. Customer acknowledges that the Software in source code form remains a confidential trade secret of ForeScout and/or its licensors, and Customer may not, and may not permit any third party to, reverse engineer, decipher, decompile, modify or disassemble the Software or the Hardware or otherwise attempt to derive the source code of the Software (except as authorized by law), extract the Software from the Hardware, incorporate the Software in whole or in part in any other software or product, or modify the Software, develop derivative works of the Software or allow others to do so, or to attempt to do any of



the foregoing, without the express prior written consent of ForeScout. If Customer makes any modifications to the Software, including any derivative works, ForeScout shall own such modifications. Except as expressly provided herein, Customer may not, and may not permit any third party to, reproduce the Software or remove any copyright, trademark, proprietary rights, disclaimer or warning notices placed on, included in or embedded in any part of the Hardware or the Software. Customer will not, and will not permit any third party to, disclose the results of any benchmark, functionality or performance tests run on the Software to any competitors of ForeScout. Customer represents and warrants that its use of the Products, as well as its execution (if applicable), delivery and performance of this Agreement, does not conflict with any agreement or understanding to which Customer may be bound including, without limitation, any third party intellectual property rights. If Customer purchases any Products designated for a specified limited use as set forth in an Order, including without limitation, high availability, disaster recovery or lab testing ("Limited Use Products"), Customer may only use such Limited Use Products for the limited purpose for which they were purchased and may not use such Limited Use Products to exceed Customer's total authorized Endpoint Count on its network. If Customer uses the Limited Use Products in violation of this Section, ForeScout reserves the right to charge Customer applicable fees as provided in Section 17 (*Audit*).

**4. SERVICE PROVIDERS.** If Customer has arranged for a service provider (other than ForeScout) including, without limitation, a managed service provider to manage the Products on behalf of Customer ("Service Provider"), Customer may sublicense the Products to the Service Provider only for the purposes contemplated by this Agreement, provided that Service Provider complies with the terms and conditions hereof and Customer shall be responsible for such compliance.

**5. THIRD PARTY VENDOR PRODUCTS AND APPLICATIONS.** Customer acknowledges that it may be able to use the Products to interoperate with products and applications developed and sold independently by third party vendors. ForeScout does not warrant, and this Agreement does not cover, any third party vendor products or applications, even if they are designated by ForeScout as "certified," "approved," "recommended" or are otherwise provided by a third party that is a member of a ForeScout partner program. Any purchase or use by Customer of any third party vendor product is solely between Customer and such vendor, and Customer agrees that ForeScout has no liability or obligation to Customer for those products or applications, the results or use thereof, or the effect that the use thereof has on the operation of the Products.

**6. INTELLECTUAL PROPERTY OWNERSHIP.**

**6.1. Customer Material.** Customer shall retain all rights, title and interest in any and all Customer products, data, plans, specifications, reports, designs, network architecture, documentation and other similar information, or any derivatives thereof, developed, used or disclosed by Customer in its receipt of Professional Services under this Agreement and any applicable SOW (collectively "Customer Materials"). Except as explicitly set forth herein, no rights, title and interest in any Customer Materials are transferred to ForeScout.

**6.2. ForeScout Material.** ForeScout shall retain all rights, title and interest in all Products, updates, data, plans, processes, methods, specifications, reports, designs, templates, scripts, code, technological "know how," technology, documentation and other similar information, and any derivatives thereof, developed, used or disclosed by ForeScout (or a third party service provider acting on ForeScout's behalf) in the performance of this Agreement including, without limitation, the provision of Professional Services and any applicable SOW as contemplated hereunder (collectively "ForeScout Materials"). All Software updates and other changes, improvements, Fixes or other modifications to the Software provided under ActiveCare shall be deemed "Software" for purposes of this Agreement. Except as explicitly set forth herein, no rights, title or interest in any ForeScout Materials is transferred to Customer under this Agreement.

**6.3. Work Product.** To the extent ForeScout Materials are incorporated into the Professional Services or deliverables provided under this Agreement (collectively, "Work Product"), such Work Product is provided to Customer in a non-transferable, non-exclusive, world-wide and royalty free license to use the Work Product solely for Customer's internal business purposes upon payment in full of all fees and expenses due to ForeScout for the applicable Professional Services and deliverables and subject to the Product license use restrictions, provided that (i) Customer may modify and enhance deliverables consisting of scripts and code solely for its own internal business purposes, and (ii) Customer will own the portion of the deliverables delivered to

Customer in tangible form consisting of written reports, analyses, architecture diagrams, projects plans and similar working documents. Customer agrees not to reverse engineer any software included in the Work Product.

**6.4. Feedback.** In the course of the Parties' performance of their obligations under this Agreement each Party may provide to the other Party comments, suggestions or other feedback on ForeScout Materials or Customer Materials, as applicable (collectively, "Feedback"). Such Feedback is provided on an "as is" basis with no warranties of any kind and the receiving Party will have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use, modify, and distribute such Feedback in any manner without compensation, or attribution of any kind, to the providing Party.

**6.5. Reservation of Rights.** Each Party reserves all intellectual property rights not expressly granted to the other Party under this Agreement. Customer acknowledges and agrees that, subject to its confidentiality obligations in Section 10 (*Confidentiality*), ForeScout is not restricted from developing, implementing, marketing or selling Products, ActiveCare or Professional Services or deliverables for other customers or projects that are similar to the Products, ActiveCare, Professional Services or deliverables provided under this Agreement.

**7. LIMITED WARRANTIES.**

**7.1. Software Warranty.** ForeScout warrants to Customer that for a period of ninety (90) days from the date the Product is shipped or for a virtual Product, the date on which it is first made available electronically the Software will perform substantially in accordance with the accompanying Documentation, provided that such Software is used by Customer in accordance with such Documentation and this Agreement. This warranty shall not apply if the failure of the Software is attributed to Customer's failure to apply any updates, upgrades, or any other action or instruction recommended in writing by ForeScout.

**7.2. Hardware Warranty.** ForeScout warrants to Customer that for a period of ninety (90) days from the date of the Product is shipped, the Hardware (i) will be free from material defects in materials and workmanship and (ii) will perform in material conformity with the functions described in the accompanying Documentation, provided that such Hardware is used by Customer in accordance with such Documentation and this Agreement. ForeScout further warrants that Customer will receive good and clear title to the Hardware, free and clear of all liens and encumbrances (excluding any Software licensed to Customer pursuant to Section 2 (*Grant of License; Reservation of Rights*) above).

**7.3. Professional Service Warranties.** ForeScout represents and warrants that the Professional Services provided hereunder shall be provided in a professional and workmanlike manner.

**7.4. ActiveCare Warranty.** ForeScout represents and warrants that it will provide the ActiveCare services in a professional and workmanlike manner.

**7.5. Warranty Remedies.** ForeScout's sole and exclusive obligation and Customer's sole and exclusive remedy under the limited warranties provided in this Section 7 shall be as follows, (i) with respect to Sections 7.1 and 7.2, at ForeScout's election, either: (a) replacement of the Hardware, or (b) ForeScout's commercially reasonable efforts to make the Software perform substantially in accordance with the accompanying Documentation; and (ii) with respect to Section 7.3, ForeScout shall re-perform the applicable Professional Services within a reasonable time. The above remedies are available only if Customer promptly notifies ForeScout in writing within the applicable warranty period, or with regard to Professional Services, within thirty (30) days following the date of completion of the applicable Professional Services. If Customer discovers within the applicable warranty period of Sections 7.1 or 7.2 that the Hardware or the Software fails to substantially conform to the Documentation, Customer must promptly notify ForeScout in writing and obtain a Return Material Authorization ("RMA") and an RMA number from ForeScout prior to returning the Hardware or Software. Shipping costs for RMAs will be covered by ForeScout. Any replacement Hardware or Software will be warranted for the remainder of the original warranty period, or for ninety (90) days, whichever is longer.

**7.6. Warranty Exclusions.** The warranties set forth in this Section 7 are void if failure of the Products is a result of (i) Customer exceeding the licensed Endpoint Count (ii) any alteration or modifications to the Products, except by ForeScout; (iii) installation, operation, repair, or maintenance of the Products not in accordance with the Documentation; and (iv) abnormal physical or electrical or abnormal environmental conditions, accident, abuse, or misuse. In addition, the warranties are



void if Customer is using the Products for beta, evaluation or demonstration purposes for which separate terms and conditions apply.

**7.7. Exclusive Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE WARRANTIES STATED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, LOSS OF USE, LOST DATA OR QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE. ForeScout does not warrant that Customer's use of the Hardware or the Software will be uninterrupted or error-free. Customer agrees that Customer has not relied on the future availability of any products or services in entering into this Agreement. Any ActiveCare services and/or Professional Services provided by ForeScout to Customer represent a services arrangement and not a product warranty.

**7.8. No Returns, Exchanges, Refunds or Credits.** Except for returns permitted in accordance with Section 7.2 (*Warranty Remedies*), ForeScout shall not accept any returns or exchanges of Products once the Products have been shipped or, for a virtual product, made available electronically. Further, other than as explicitly set forth herein, ForeScout shall have no obligation to provide Customer any refund or credit with regard to an Order.

## 8. INDEMNITY.

**8.1. General Indemnification.** Each Party shall indemnify, defend and hold the other Party harmless from the associated costs and fees (including reasonable attorneys' fees and expenses) finally awarded by a court of competent jurisdiction or agreed to in settlement or compromise, to the extent that such fees and costs arise from a third party claim, proceeding or suit which is based on the grossly negligent acts or willful misconduct of its employees or agents, that directly causes damage or bodily injury to persons or property, real or tangible, and such damage or bodily injury directly arises out of performance of this Agreement.

**8.2. IP Indemnification.** ForeScout agrees to, and shall, indemnify, defend and hold Customer harmless from the associated costs and fees (including reasonable attorneys' fees and expenses) finally awarded by a court of competent jurisdiction or agreed to in settlement or compromise, to the extent that such fees and costs arise from a third party claim, proceeding or suit alleging that the Software, Professional Services, or portion thereof, provided to Customer pursuant to this Agreement infringes a third party patent, copyright or trade secret that is protected under the applicable jurisdiction in which the Products are being used or where the Professional Services are performed, as applicable.

**8.3. Procedure.** A Party's ("Indemnifying Party") indemnification obligations shall be conditioned upon the other Party ("Indemnified Party") promptly notifying Indemnifying Party of any indemnification claim under this Section 8 (a "Claim") and permitting Indemnifying Party to assume full control over the defense and settlement of such Claim; provided however, that: (i) Indemnifying Party shall keep Indemnified Party informed of, and consult with Indemnified Party in connection with the progress of such litigation or settlement; and (ii) Indemnifying Party shall not have any right, without Indemnified Party's written consent (which shall not be unreasonably withheld), to settle any such Claim if such settlement contains a stipulation to or admission or acknowledgment of any liability or wrongdoing (whether in contract, tort or otherwise) on Indemnified Party's part, or requires any specific performance or non-pecuniary remedy by Indemnified Party.

**8.4. Exceptions.** Notwithstanding the foregoing, ForeScout will have no indemnification obligation to Customer under this Section 8 to the extent that any such Claim arises or results from (i) Customer's failure to use the Products, ActiveCare services or Professional Services in conformance with the Documentation; (ii) the combination of the Products, ActiveCare services or Professional Services provided by ForeScout under this Agreement with other products or services not provided by ForeScout, to the extent that such Claim would not have resulted except for such combination; (iii) the alteration or modification of the Products, ActiveCare services or Professional Services by or for Customer without ForeScout's written consent, if such Claim would have been avoided in the absence of such alteration or modification; or (iv) the Claim could be avoided by Customer's use of alternative products or services provided or offered to Customer by ForeScout at no additional cost that perform in a substantially similar fashion as the Product, ActiveCare services or Professional Services at issue.

**8.5. IP Remedies.** Should Software or Professional Services provided under this Agreement become, or in ForeScout's reasonable opinion be likely to become, the subject of an infringement Claim, ForeScout may, at its sole discretion and expense, either: (i) procure for Customer the right to exercise its rights under this Agreement; or (ii) replace or modify the Software to make it non-infringing, provided that the same functions are performed by the replaced or modified Software, or, in the case of Professional Services, re-perform the Professional Services in a manner that is non-infringing, provided that Customer receives the material benefits of the Professional Services. If ForeScout determines in its sole discretion that (i) or (ii) are not commercially reasonable, ForeScout shall so notify Customer in writing and as applicable, terminate Customer's licenses to such affected Software or suspend or cancel the Professional Services under this Agreement. Upon ForeScout's written notice of such termination, Customer shall return to ForeScout all affected Software, or deliverables provided in connection with the affected Professional Services, in Customer's possession for a pro-rata refund of those fees paid by Customer to ForeScout for (i) the affected Software calculated over a 36 month period on a straight line basis or (ii) the affected Professional Services calculated on a straight line basis over the duration of the Professional Services purchased.

**8.6. Entire Obligation.** The foregoing states the entire liability of ForeScout and Customer's exclusive remedy with respect to any Claim.

## 9. LIMITATION OF LIABILITY.

**9.1.** EXCEPT FOR FORESCOUT'S INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 8.2 (*IP INDEMNIFICATION*) OR A PARTY'S BREACH OF SECTION 10 (*CONFIDENTIALITY*), TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY, ITS LICENSORS, AFFILIATES, AGENTS, SUPPLIERS, DISTRIBUTORS AND RESELLERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST DATA OR LOSS OF USE, OR PROCUREMENT OF REPLACEMENT GOODS, HOWEVER INCURRED BY A PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2.** EXCEPT FOR FORESCOUT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.2 (*IP INDEMNIFICATION*) OR A PARTY'S BREACH OF SECTION 10 (*CONFIDENTIALITY*), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT(S), ACTIVECARE SERVICES OR PROFESSIONAL SERVICES AT ISSUE. This limitation of liability is cumulative and not per incident (i.e., the existence of two or more claims will not enlarge this limit).

**9.3.** The Parties acknowledge and agree that the disclaimers of warranty and the limitations of liability set forth herein reflect a reasonable allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and result in consequential loss), and that the same form an essential basis of the bargain between the Parties. THE LIMITATIONS OF THIS SECTION 9 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

## 10. CONFIDENTIALITY.

**10.1. Confidential Information.** "Confidential Information" means any information which is disclosed by a Party (the "Discloser") in connection with this Agreement, directly or indirectly, in writing, orally or by drawings or inspection of equipment or software, to the other Party (the "Recipient") or any of its employees or agents and that is designated or marked as "confidential" or "proprietary" at the time of disclosure or that, based on the circumstances surrounding the disclosure, the Recipient knows or reasonably should know is considered confidential. Confidential Information shall also include the Software and all documents provided with the Hardware that contain ForeScout's confidential trade secret information. The restrictions on disclosure set forth in this Section 10 shall not apply to Confidential Information which: (i) becomes publicly known without breach of this Agreement; or (ii) the Recipient can show by written records was rightfully in its possession prior to the disclosure by the Discloser or becomes rightfully known to the Recipient without confidential or proprietary restriction from a source other than the Discloser; (iii) is approved for disclosure without the restriction in a written document which is signed by a duly authorized officer of the Discloser, or (iv) is independently developed by the Recipient prior to the disclosure without reference to the Discloser's Confidential Information.

**10.2. Obligations.** Recipient may use the Discloser's Confidential Information solely for the purpose of exercising its rights and performing its obligations under this





Agreement. Recipient agrees to take the same care with the Discloser's Confidential Information as it does with its own information of a similar nature, but in no event with less than a reasonable degree of care. Recipient shall limit access to the Confidential Information to those persons having a need to know such information, provided that each such employee and consultant is subject to a written agreement containing confidentiality obligations no less protective than those contained in this Agreement. Recipient may disclose Confidential Information: (i) insofar as disclosure is reasonably necessary to carry out and effectuate the terms of this Agreement; (ii) insofar as the Recipient is required by law or legal proceedings to disclose such information provided that the Recipient provides the Discloser with prompt written notice of such requirement to enable the Discloser to seek a protective order; (iii) insofar as disclosure is necessary to be made to the Recipient's independent accountants for tax or audit purposes; and (iv) insofar as the Parties may mutually agree in writing upon language to be contained in one or more press releases. In addition, neither Party will disclose to any third party the terms of this Agreement without the prior written consent of the other Party.

## 11. COMPLIANCE WITH LAWS.

**11.1. General.** Each Party will comply fully with all international and national laws and regulations that apply to the Products and to Customer's use thereof.

**11.2. Export Controls.** Customer represents that it is not a "Restricted Person," which shall be deemed to include any person or entity: (i) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (ii) on any restricted person or entity list maintained by any U.S. governmental agency. Unless authorized by U.S. regulation or license, neither Party will, in connection with the activities contemplated by this Agreement, export or re-export, directly or indirectly, any Products, including without limitation, any technical data, computer software, or any product (or any part thereof), process, or service that is the direct product of any such technical data or computer software that has been received from the other Party in connection with the activities contemplated by this Agreement (hereinafter referred to collectively or individually, "Controlled Products") (a) to any country (or nationals thereof) in Country Group E of the Export Administration Regulations of the United States ("EAR") or any other country subject to sanctions administered by the Office of Foreign Assets Controls (the then-current list can be found at <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>); (b) to any non-civil (i.e. military) end users or for any non-civil end uses in any country in Country Group D:1 of the EAR, as such list may be modified from time to time (the then-current lists can be found at <http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>); or (c) in violation of the International Traffic and Arms Regulation. The Parties understand that countries other than the U.S. may restrict the import or use of strong encryption products or other items and may restrict such exports. The Parties agree to comply with any such import or other restrictions. Each Party represents and warrants that it is not currently debarred, suspended, or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the U.S., and will immediately notify the other Party in the event that any of the foregoing occurs.

**11.3.** Each Party will indemnify, to the fullest extent permitted by law, the other Party from and against any fines or penalties that may arise as a result of a Party's breach of this Section 11.

**12. DATA PROTECTION.** Unless necessary to use the Products, ActiveCare, or Professional Services, Customer agrees to not submit to ForeScout: (i) any personally identifiable information; (ii) any protected health information regulated by the U.S. Health Insurance Portability and Accountability Act ("HIPAA") or any similar federal, state, or local laws, rules, or regulations; or (iii) any information subject to regulation or protection under the Gramm-Leach-Bliley Act. Customer acknowledges that any submission to ForeScout contrary to the foregoing statement is at Customer's own risk. Customer further acknowledges that ForeScout is not acting as Customer's Business Associate or subcontractor as defined in HIPAA. Nonetheless, each Party will use commercially reasonable efforts to comply with applicable personal data protection and privacy laws where the Products are used.

**13. NON-SOLICITATION.** During this Agreement, and for a period of one (1) year immediately following the termination or expiration of this Agreement, neither Party will solicit or induce any employee or independent contractor of the other Party

involved in the performance of this Agreement to terminate or breach an employment, contractual or other relationship with the other Party. The foregoing does not apply to general advertisements or inquiries seeking to fill positions.

**14. PUBLICITY.** Any and all press releases and other public announcements relating to the existence or terms of this Agreement or the related transactions between ForeScout and Customer must be approved in advance by the Parties in writing.

## 15. INSURANCE.

**15.1.** During the term of the Agreement, ForeScout agrees to maintain the following insurance coverage:

(i) Commercial general liability insurance for a combined single limit of USD \$1,000,000 per occurrence and an aggregate limit of USD \$2,000,000 for bodily injury and property damage;

(ii) Auto liability insurance for a combined single limit of USD \$1,000,000 for bodily injury and property damage for owned, non-owned and hired automobiles;

(iii) Error & omissions liability insurance for a combined single limit of USD \$1,000,000 per claim and an aggregate limit of USD \$2,000,000;

(iv) Statutory worker's compensation in accordance with applicable law; and

(v) Employer's liability insurance with a maximum limit USD \$1,000,000.

**15.2.** Upon Customer's written request, ForeScout will provide a certificate of Insurance evidencing the above policies with A.M. Best rated carriers with at least an A-VII rating.

## 16. SUPPORT AND PROFESSIONAL SERVICES.

**16.1. ActiveCare Support.** If Customer has separately ordered maintenance and support services through ForeScout's ActiveCare program, the terms of such program are set forth at <https://forescout.com/company/legal/activecare-maintenance-and-support-policy/>. Maintenance and support is not included in the purchase price of the Products, and must be purchased separately.

**16.2. Professional Services.** If purchased by Customer, ForeScout will provide Customer certain Professional Services as more fully as described in a Statement of Work, referencing this Agreement ("SOW"), or in a ForeScout datasheet ("Datasheet"), as applicable. Customer shall be invoiced for approved expenses incurred as a result of performing Professional Services in accordance with a SOW or Datasheet, as applicable. In the event that a SOW or Datasheet does not state that expenses are included in the Professional Services fees, then Customer shall reimburse for expenses reasonably incurred in the performance of the Professional Services, provided that copies of valid receipts are submitted to Customer.

**17. AUDIT.** During the term of this Agreement, and for one (1) year following termination of this Agreement, ForeScout (including its independent auditor) shall have the right to inspect and audit Customer's records and use of the Products and Limited Use Products to verify Customer's compliance with the terms of this Agreement, including without limitation, continuous monitoring of the number of Endpoints monitored by the Products in relation to the authorized Endpoint Count. In the event of an onsite audit, ForeScout shall provide Customer with at least five (5) business days' prior written notice of such audit and shall conduct the audit during regular business hours in a manner so as not to unreasonably interfere with Customer's business. Customer shall provide ForeScout reasonable assistance and access to relevant information in relation to the audit, including without limitation authorization, access and enablement of remote Endpoint audit capability within the Products. If an audit reveals any unauthorized reproduction, installation, or use of the Products or Limited Use Products (an "Unauthorized Use") then (i) Customer shall remedy the non-compliance within thirty (30) days of notice of such Unauthorized Use from ForeScout ("Remedy Period"); and, (ii) to the extent the Unauthorized Use is a Material Capacity Breach or other material breach of this Agreement, (a) Customer shall pay the applicable fees (at ForeScout's then-current rates) attributed to such non-compliance plus interest at the rate of 1.5% per month, and (b) pay for the reasonable costs incurred by ForeScout to perform the audit. If Customer fails to discontinue and disable the Unauthorized Use, or fails to comply with mutually agreeable terms to bring Customer in compliance with the terms of this Agreement, within the Remedy Period, ForeScout may, in its sole discretion and upon written



notice to Customer, terminate this Agreement for material breach in accordance with Section 19.2 (*Termination*).

**18. U.S. GOVERNMENT RESTRICTED RIGHTS.** This Section 18 applies only if Customer is an agency or other part of the U.S. Government ("Government End User"). ForeScout licenses its Software and Documentation to users within the U.S. Government and any contractor thereof only under the terms of ForeScout's standard federal licensing agreement for commercial end use. If Customer is a Government End User, ForeScout hereby identifies the Software and Documentation, and, to the extent applicable, Customer will identify the Software and Documentation in all proposals and agreements with any Government End User or any contractor thereof, as follows: (i) For acquisition by or on behalf of civilian agencies, as necessary to obtain protection as "commercial computer software" and related documentation in accordance with the terms of the Party's standard software license agreement, as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations ("FAR") and its successors; (ii) For acquisition by or on behalf of units of the U.S. Department of Defense, as necessary to obtain protection as "commercial computer software" and "commercial computer software documentation" in accordance with the terms of the Party's standard software license agreement, as specified in 48 C.F.R. 227.7202. To the extent applicable and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, Customer may provide to a Government End User or, if Customer is a Government End User, such Government End User will acquire, the Software and Documentation with only those rights set forth in this Agreement.

## 19. TERM AND TERMINATION.

**19.1. Term.** This Agreement (excluding any Orders or SOWs hereunder) is effective upon ForeScout's acceptance of an Order and will remain in full force and effect unless otherwise terminated in accordance with the termination provisions of Section 19.2 (*Termination*) below. An ActiveCare term will commence on the effective date identified in an Order as applicable ("Initial Term") unless terminated earlier as set forth below. Following expiration of the Initial Term, ActiveCare will automatically renew for successive one (1) year terms (each a "Renewal Term") unless either Party provides written notice to the other Party at least sixty (60) days prior to the commencement of a Renewal Term of its intent to avoid such Renewal Term. The Initial Term and any Renewal Terms of with respect to ActiveCare are collectively referred to as the "Term." The terms and conditions applicable to any Renewal Term(s) will be the same as those in effect for the immediately preceding portion of the Term; provided, however, that ForeScout may increase fees for any Renewal Term by providing written notice of such increase to Customer at least ninety (90) days prior to the commencement of such Renewal Term.

**19.2. Termination.** Either Party may terminate this Agreement, in whole or in part, for the other Party's material breach (including Customer's breach of its payment obligations) that is not cured within thirty (30) days of the date of receipt of notice of the breach from the non-breaching Party. In addition, either Party may terminate this Agreement, in whole or in part, immediately if the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

**19.3. Professional Services Cancellation.** The Professional Services to be provided by ForeScout require specialized personnel and resources that must be allocated in advance. In the event Customer requests cancellation or rescheduling of any Professional Services within five (5) business days of its scheduled start date, the following fees shall apply: (i) for all Professional Services except for training, a cancellation fee of \$2,500; (ii) for training services only, a cancellation fee of \$1,000; and (iii) any expenses actually incurred by ForeScout due to cancellation or rescheduling, including without limitation, fees, charges and penalties related to airfare, visas, and accommodations. Any Professional Services ordered but not used within twelve (12) months of the date of the Order shall be cancelled, and no refund or credit shall be due to Customer.

**19.4. Effect of Termination.** Upon termination of this Agreement, in whole or in part, Customer agrees to pay ForeScout, within thirty (30) days from the effective date of termination, all earned and unpaid fees, whether invoiced or work in process, up to the effective date of termination. The termination of this Agreement shall immediately terminate any and all Orders and SOWs executed hereunder. Any unearned payments made in advance to ForeScout are non-refundable. In addition, upon termination of this Agreement for Customer's material breach, or pursuant to Section 8.5 (*IP Remedies*) Customer shall immediately cease using the Software, destroy the Software (and its accompanying Documentation) and ForeScout

ForeScout End User License Agreement (Web) 7.6.17

CONFIDENTIAL & PROPRIETARY

Confidential Information or return the Software (and its accompanying Documentation) and ForeScout Confidential Information to ForeScout. Upon ForeScout's request, Customer shall provide ForeScout a certificate of destruction evidencing compliance with the foregoing.

**19.5. ActiveCare Reinstatement.** In no event shall ForeScout be responsible for providing ActiveCare support for any Products if ActiveCare has been terminated pursuant to the terms of this Agreement. In order for Customer to resume lapsed ActiveCare as the result of termination, (i) ForeScout must approve the Order, as determined in its sole discretion, if ActiveCare was terminated due to Customer's material breach; and (ii) Customer must (a) renew ActiveCare for a minimum of a one (1) year term at the then-current ActiveCare rates; and (b) pay an amount equal to five percent (5%) of the amount set forth in subsection 19.5(ii)(a) to compensate ForeScout for costs incurred to bring Customer's implementation into compliance with current Software and Hardware releases. After Customer pays the foregoing amounts in full, the effective date of the reinstated ActiveCare Term shall be the date following the termination date of the previous ActiveCare Term.

**19.6. Survival.** The following Sections shall survive any expiration or termination of this Agreement, in whole or in part, in accordance with their respective terms: 2.2 (*Reservation of Rights*), 3 (*License Restrictions*), 4 (*Service Providers*); 5 (*Third Party Vendor Products and Applications*), 6 (*Intellectual Property Ownership*), 8 (*Indemnity*), 9 (*Limitation of Liability*), 10 (*Confidentiality*), 11 (*Compliance with Laws*), 14 (*Publicity*), 15 (*Non-Solicitation*), 17 (*Audit*), 18 (*U.S. Government Restricted Rights*); 19 (*Term and Termination*), and 20 (*General*).

## 20. GENERAL.

**20.1 Independent Contractors.** The relationship of ForeScout and Customer is that of independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the Parties. Neither Party has the authority to bind the other or to incur any obligation on the other's behalf or to represent itself as the other's agent or in any way that might result in confusion as to the fact that the Parties are separate and distinct entities.

**20.2 Force Majeure.** Neither Party shall be liable for any loss, damage, or penalty resulting from delays or failures in performance resulting from acts of God, material shortages, or other causes beyond such Party's commercially reasonable remedy or control.

**20.3 Governing Law.** This Agreement will be governed and construed under the laws of the State of California without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction. The Parties irrevocably and unconditionally (i) consent to submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, USA ("Venue") for the resolution of any dispute between the Parties concerning the Products, ActiveCare or Professional Services specified herein; (ii) agrees not to commence any such proceedings except in such courts; and (iii) waives any objection to the laying of venue of any such proceedings in the state or federal courts located in the Venue.

**20.4 Notices.** All notices under this Agreement are required to be sent either via electronic delivery or by commercial overnight courier with written verification of delivery. All notices so given will be deemed received upon the date of receipt if by electronic delivery or two (2) days after dispatch for courier deliveries. If to Partner, all notices shall be sent to the address indicated in the most recent Order. If to ForeScout, all notices shall be sent to [generalcounsel@forescout.com](mailto:generalcounsel@forescout.com) or to 190 West Tasman Drive, San Jose, CA 95134, USA; Attention: General Counsel.

**20.5 Severability.** If any provision of this Agreement is held invalid by the final determination of any court or other tribunal of competent jurisdiction, such provision shall be reformed only to the extent necessary to make it enforceable, and shall not affect the enforceability of (i) such provision under other circumstances or jurisdictions, or (ii) any other provision under all circumstances or jurisdictions. The invalid or unenforceable provision will be construed by such judicial body so as to be enforceable to the maximum extent compatible with applicable law.

**20.6 Headings; Language.** The headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement. Regardless of any language into which this Agreement may be translated, the official, controlling and governing version of this Agreement shall be exclusively the English language version.

**20.7 Assignment.** Customer may not assign or transfer this Agreement, nor any rights or obligations under this Agreement without the prior written consent of



ForeScout. Any attempted assignment in violation of the foregoing shall be void and of no effect. However, notwithstanding the foregoing, either Party may assign this Agreement in its entirety to (i) any Affiliate of such Party; (ii) any successor in interest to such Party by way of merger or consolidation; or (iii) a purchaser of all or substantially all of the assets of such Party, provided that the assignee agrees in writing to be bound by all of the terms and conditions of this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties.

**20.8 Counterparts.** If applicable, this Agreement may be executed in two (2) counterparts, both of which taken together shall constitute one (1) single agreement between the parties. The parties may execute this Agreement by electronic signature which shall be deemed an original signature for all purposes. The parties agree that a version of this Agreement transmitted by means of electronic message or electronic record (electronic mail, electronic data interchange), once duly signed by the authorized representatives of each party, shall constitute a binding agreement and shall have the same force and effect as a document bearing the original signatures.

**20.9 Order of Precedence.** In the event of a conflict between this EULA and any Order, the terms of the Order shall govern, but only in regard to the specific Products, ActiveCare or Professional Services provided under that Order.

**20.10 Entire Agreement.** This Agreement constitutes the entire agreement between ForeScout and Customer with respect to the subject matter hereof, and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to such subject matter. No waiver, amendment or modification of any provision of this Agreement shall be enforceable against ForeScout unless it is in writing and signed by ForeScout. Notwithstanding the foregoing, ForeScout may amend the terms and conditions of this Agreement or any other documents and policies referenced herein at any time, including without limitation by posting such revised terms on its website ([www.forescout.com](http://www.forescout.com)) or the location of such other document or policy. Such amended terms and conditions shall be binding on Customer on the effective date of such change and shall supersede any prior version (including this Agreement) which may have been embedded in or packaged with the Product itself. Except for the exclusive remedies specified herein, each Party will have all rights and remedies available to it at law or in equity for the protection of its rights hereunder, including an injunction enjoining the breach or threatened breach of this Agreement. This Agreement is not governed by the United Nations Convention of Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of each of which is hereby expressly excluded.

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