

Beta Test Agreement

This Beta Test Agreement is a contract between you, the organization on whose behalf you are authorized to enter this Agreement (“You”) and ForeScout Technologies, Inc. (“ForeScout”), which covers Your use of the ForeScout beta product(s) (hardware and/or software) that accompanies this Beta Test Agreement, which may include associated media, printed materials, and online or electronic documentation.

1. DEFINITIONS

- (a) **"Beta Products"** shall mean the beta version of certain ForeScout products (including any Updates thereto, in the case of software) and the media and Documentation provided by ForeScout to You. Beta Products may include Software and/or Hardware, both as defined below.
- (b) **"Beta Test Request Form"** means ForeScout’s beta test request form, executed by You, that refers to this Agreement, and that describes in greater detail the specific Beta Products, and Your order-specific information, including, but not limited to, shipping information and the evaluation start and end dates. Such Beta Test Request Forms(s) is (are) hereby incorporated into this Agreement by reference.
- (c) **"Documentation"** shall mean the printed or online written reference material furnished to You in conjunction with the Beta Products, including, without limitation, instructions, beta testing guidelines, and end user guides.
- (d) **"Hardware"** shall mean any ForeScout hardware appliance products loaned to You pursuant to this Agreement, if any.
- (e) **"Intellectual Property Rights"** shall mean all intellectual property rights, including, without limitation, patent, copyright, trademark, and trade secret.
- (f) **"Open Source Software"** means various open source software components of the Software that are licensed to You under the terms of the applicable license agreements included with such open source software components or other materials for the Software.
- (g) **"Software"** shall mean the applicable ForeScout software products licensed to you for non-production or in-production evaluation purposes pursuant to this Agreement.
- (h) **"Updates"** shall mean a modification, error correction, bug fix, new release, or other update to or for any Software.

2. LICENSE GRANT, USE AND OWNERSHIP

- (a) **Limited License.** Subject to the terms and conditions of this Agreement, ForeScout grants You a non-exclusive, nontransferable license (without the right to sublicense) (i) to use the Software in accordance with the Documentation solely for purposes of internal testing and evaluation, and for in-production testing of the Beta Products; (ii) to use the Documentation provided with the Software in support of Your authorized use of the Software; and (iii) to copy the Software for archival or backup purposes, provided that all titles and trademarks, copyright, and restricted rights notices are reproduced on such copies. Nothing in this limited license permits You to modify the Software.
- (b) **Loan of Hardware.** If ForeScout loans Hardware to you pursuant to this Agreement, ForeScout is loaning such Hardware to You solely for purposes of internal testing and evaluation, and in-production testing of the Beta Products. You shall not disassemble the Hardware, in whole or in part, or use any mechanical, electrical or other method to decompile, disassemble or decrypt the Hardware or encourage others to do so. You shall do nothing inconsistent with ForeScout’s title to the Hardware,

including but not limited to transferring, loaning, selling, assigning, pledging or otherwise disposing, encumbering or suffering a lien or encumbrance upon or against any interest in the Hardware.

- (c) **Evaluation Feedback.** The purpose of this limited license is the testing and evaluation of the Beta Products and Documentation. In furtherance of this purpose, You shall provide feedback to ForeScout concerning the functionality and performance of the Beta Products from time to time as reasonably requested by ForeScout, including, without limitation, identifying potential errors, improvements, modifications, bug fixes, or enhancements ("Feedback"). Such Feedback will be in a manner convenient to You and will be subject to reasonable availability of Your personnel. Notwithstanding the foregoing, prior to disclosing to ForeScout any information in connection with this Agreement which You consider proprietary or confidential, You will obtain ForeScout's prior written approval to disclose such information to ForeScout, and without such prior written approval from ForeScout, You will not disclose any such information to ForeScout. Feedback and other information which is provided by You to ForeScout in connection with the Beta Products or this Agreement may be used by ForeScout to improve or enhance its products and, accordingly, You grant ForeScout a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback and information without restriction.
- (d) **Restrictions.** You shall not copy or use the Beta Products (including the Documentation) or disseminate Confidential Information, as defined below, to any third party except as expressly permitted in this Agreement. You will not, and will not permit any third party to, sublicense, rent, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form any Software or accompanying Documentation. In no event shall You use the Beta Products for Your product development or any other commercial purpose. The Beta Products and all performance data and test results, including without limitation, benchmark test results (collectively "Performance Data"), relating to the Beta Products are the Confidential Information of ForeScout, and will be treated in accordance with the terms of Section 4 of this Agreement. Accordingly, You will not publish or disclose to any third party any Performance Data relating to the Beta Products.
- (e) **Ownership.** ForeScout shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Beta Products and any derivative works thereof, subject only to the limited license expressly set forth in Section 2(a) hereof. You do not acquire any other rights, express or implied, in the Beta Products. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO FORESCOUT.
- (f) **No Support Services.** ForeScout is under no obligation to support the Beta Products in any way or to provide any Updates to You. In the event ForeScout, in its sole discretion, supplies any Update to You, such Update shall be deemed Software hereunder and shall be subject to the terms and conditions of this Agreement.
- (g) **Hardware Products.** For any Hardware loaned to You under this Agreement, the following additional terms shall apply:
 - (i) You will take delivery of the Hardware by method of DDP (Incoterms 2010). Your shipping address (as provided in the Beta Test Request Form). You will provide accurate ship-to addresses, contacts, emails, phone numbers, and, if applicable, freight forwarder/broker of record.
 - (ii) If an export license is required, ForeScout shall obtain exporting license/authorization and fulfilling reporting requirements of such licenses (except for restricted or embargoed countries). In respect of US Origin goods, ForeScout is responsible for providing the forwarding agent with the US electronic export information filing in the AES system. The forwarding agent shall be acting as ForeScout's agent for the limited purpose of filing the US electronic export information in the AES system. You will ensure that the forwarding agent is provided accurate and complete information and documents reflecting the filing in the AES system. For any reason if You decide to use your own forwarding agent from the United States to an international destination, You will be responsible for accurate and true AES filings, in addition to proper denied party screening. ForeScout will be informed if you prefer this method. Any import licenses required by territory destinations are Your responsibility.
 - (iii) All Hardware will be packaged for shipment in accordance with the packaging regulations in force in the territory (You will provide any special packaging requirements to ForeScout for review and preparation prior to shipment). Shipment will be made to Your identified facilities or freight forwarder.

- (iv) You will (at ForeScout's expense) return the Hardware to ForeScout after the beta test end date specified in the Beta Test Request Form or termination of this Agreement, whichever is earlier.
- (v) You are responsible, and shall reimburse ForeScout, for loss of or damage to the Hardware while it is in Your possession. If You fail to return the Hardware within 30 days of the return date specified in the Beta Test Request Form, You will pay the then-current list price for the Hardware. If You feel You do not have the proper packaging protection to return the Hardware, ForeScout can assist by sending You a spare, approved carton.
- (vi) You will maintain the Hardware in good working condition, reasonable wear and tear excepted.
- (vii) You are solely responsible for all risk of loss or damage to the Hardware while in Your possession.
- (h) **Open Source Software.** The terms and conditions of this Agreement shall not apply to any Open Source Software accompanying the Beta Products. Any such Open Source Software is provided under the terms of the open source license agreement or copyright notice accompanying such Open Source Software.

3. TERM AND TERMINATION

Unless otherwise terminated as specified under this Agreement, Your rights with respect to the Beta Products will terminate upon the earlier of (a) the date the Hardware products are returned to ForeScout, or (b) the initial release by ForeScout of the next generally available version of the Beta Product, or (c) one year after the effective date set forth below. Either party may terminate this Agreement at any time for any reason or no reason by providing the other party advance written notice thereof. ForeScout will immediately terminate this Agreement and Your rights with respect to the Beta Products without notice in the event of improper disclosure of ForeScout's Beta Products as specified under Section 4 (Confidentiality) below. Upon any expiration or termination of this Agreement, the rights and licenses granted to You under this Agreement shall immediately terminate, and You will immediately cease using, and will return to ForeScout (or, at ForeScout's request, destroy), the Beta Products, Documentation, and all other tangible items in Your possession or control that are proprietary to ForeScout or contain ForeScout Confidential Information. The rights and obligations of the parties set forth in Sections 2(b) 2(c), 2(d), 2(e), 2(f), 2(g), 4, 5, 6 and 7 shall survive termination or expiration of this Agreement for any reason.

4. CONFIDENTIALITY

- (a) "Confidential Information" shall mean all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, planned product features, functionality, methodology, performance and software source documents relating to the Beta Products, and other information provided by ForeScout, whether disclosed orally, in writing, or by examination or inspection, other than information which You can demonstrate (i) was already known to You, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to You; (iii) became generally available in the public domain after disclosure other than through any act or omission by You; (iv) was subsequently lawfully disclosed to You by a third party without any obligation of confidentiality; or (v) was independently developed by You without use of or reference to any information or materials disclosed by ForeScout or its suppliers. Confidential Information shall include without limitation the Beta Products, Documentation, Performance Data, any Updates, information relating to ForeScout products, product roadmaps, and other technical, business, financial and product development plans, forecasts and strategies. You shall not use any Confidential Information for any purpose other than as expressly authorized under this Agreement. In no event shall You use the Beta Products or any Confidential Information to develop, manufacture, market, sell, or distribute any product or service. In no event shall You disclose any Confidential Information to any third party. Without limiting the foregoing, You shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of such Confidential Information.

5. LIMITATION OF LIABILITY

IT IS UNDERSTOOD THAT THE BETA PRODUCTS ARE PROVIDED WITHOUT CHARGE FOR LIMITED TESTING AND FEEDBACK PURPOSES. ACCORDINGLY, THE TOTAL LIABILITY OF FORESCOUT AND ITS SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED \$100. IN NO EVENT SHALL FORESCOUT OR ITS SUPPLIERS

HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF FORESCOUT AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

6. WARRANTY DISCLAIMER

IT IS UNDERSTOOD THAT THE BETA PRODUCTS, DOCUMENTATION, AND ANY UPDATES MAY CONTAIN ERRORS AND ARE PROVIDED FOR LIMITED TESTING AND FEEDBACK ONLY. THE BETA PRODUCTS, THE DOCUMENTATION, AND ANY UPDATES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. FORESCOUT AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. You acknowledge that Forescout has not publicly announced the availability of the Beta Products, that Forescout has not promised or guaranteed to You that such Beta Products will be announced or made available to anyone in the future, that Forescout has no express or implied obligation to You to announce or introduce the Beta Products, and that Forescout may not introduce a product similar or compatible with the Beta Products. Accordingly, You acknowledge that any research or development that it performs regarding the Beta Products or any product associated with the Beta Products is done entirely at its own risk. Specifically, the Beta Products may contain features, functionality or modules that will not be included in the final production version of the Beta Products, if released, or that will be marketed separately for additional fees.

7. OTHER PROVISIONS

- (a) **Governing Law.** This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of California without reference to conflict of laws principles. All such disputes shall be subject to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.
- (b) **Assignment.** You shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of Forescout. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
- (c) **Export Regulations.** You understand that Forescout is subject to regulation by U.S. and foreign governments and agencies, which prohibit export or diversion of certain technical products and information to certain countries and individuals. You warrant that it will comply in all respects with all export and re-export restrictions applicable to the technology and documentation provided hereunder.
- (d) **Modification.** This is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. No waiver or modification of this Agreement shall be valid unless in writing signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.
- (e) **Counterparts.** 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 hereto agree that a version of this Agreement transmitted by means of electronic message or electronic record (electronic mail, electronic data interchange, or facsimile), 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 original signatures.

8. CONTACT INFORMATION

If you have any questions about this Beta Test Agreement, or if you want to contact Forescout for any reason, please direct all correspondence to: Forescout Technologies, Inc., 190 West Tasman Drive, San Jose CA 95134, United States of America.

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