

FORESCOUT TECHNOLOGIES, INC.  
END USER LICENSE AGREEMENT

This End User License Agreement is a legal agreement made between Forescout Technologies, Inc. (“Forescout”) and the entity that has submitted an Order for Products, ActiveCare and/or Professional Services for its internal use as an end user (“Customer”). This End User License Agreement consists of the terms and conditions set forth below, the Forescout Data Processing Addendum made available at <https://www.forescout.com/company/legal/>, 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”). Customer’s Affiliates may independently issue an Order subject to the terms of this Agreement for its internal use as an end user, provided, however, that to the extent Customer purchases the Products, ActiveCare or Professional Services on behalf of, and for use by its Affiliate(s), Customer will ensure that such Affiliate(s) complies with the terms and conditions of this Agreement and Customer shall remain liable for any Affiliate’s act or omission hereunder. 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.

“Datasheet” means a Professional Services engagement with a predefined scope, level of effort and deliverables as set forth in the Documentation, that is sold under a fixed price SKU.

“Deployment Right” means the receipt of one (1) master copy of the Software and the right to deploy instances of the Software, whether via copy, download or otherwise, subject to the restrictions as set forth in the Product Category Guide and applicable Order including, without limitation, the designated Endpoint Count.

“Documentation” means the technical documentation and specifications applicable to any given Product created and published by Forescout such as datasheets and solution briefs. “Documentation” does not include marketing collateral.

“Endpoints” include, but are not limited to, each of the MAC and IP addresses located on a user device (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/consumer equipment), virtual machines (in data center or cloud) and cloud infrastructure components (e.g., AWS IAM Users, AWS VPCs, Azure Subscriptions, Azure VNets). For purposes of clarity, a network-enabled piece of hardware or virtual machine may have multiple MAC and/or IP addresses associated with it, and each of those addresses will constitute an Endpoint. Endpoint information is retained by the Products, whether the Endpoint is online, offline, onsite, offsite or detected by the Products via third-party integrations, from initial detection until the information is purged, based on policies defined by Customer. The terms “endpoint” or “device”, or any derivative thereof as 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.

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

“Hardware” means the Forescout branded hardware appliance on which the Software is installed.

“License” means the type of Software license grant specified on the Order and as may be more fully described in the Product Category Guide. The License may be term-based or perpetual.

“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, License, Professional Services and ActiveCare services ordered.

“Product” means the Software and any Hardware that Customer has ordered, and Forescout has agreed to provide, as indicated on the applicable Order including without limitation any Affiliate Products as defined in Section 20.1.

“Product Category Guide” means the Product descriptions and License type(s) as set forth here: [www.forescout.com/company/legal/](http://www.forescout.com/company/legal/).

“Professional Services” means the Forescout implementation, configuration, consulting, or training services to be provided to Customer under any applicable SOW or Datasheet (as defined in Section 16.2).

“Software” means the proprietary software programs developed by or licensed to, Forescout, made available in object code form, as more fully described within the Documentation, as well as any modifications, error corrections, bug fixes, or other updates thereto. “Software” also includes the proprietary GUI, and associated Documentation developed by Forescout.

“Statement of Work” or “SOW” means a written agreement executed by Customer and Forescout, or its authorized partner, setting forth a project’s Professional Services time and materials-based objectives including, without limitation, project-specific activities and estimated level of effort.

**2. GRANT OF LICENSE; DEPLOYMENT RIGHTS; RESERVATION OF RIGHTS.**

**2.1. License.** Provided Customer is in compliance with the terms and conditions provided herein during the applicable Term of the License, Forescout hereby grants Customer a limited, worldwide, nonexclusive, non-transferable, non-sublicensable (except as expressly permitted hereunder) License, solely for Customer’s internal business operations and solely to support the functionality in accordance with the Product Category Guide and applicable Order including, without limitation, the Endpoint Count.

**2.2. Deployment Right; Back Up Copies.** If Customer purchases a Software License designated as FLEXX (or CL-Lite) within the Product Category Guide the License is inclusive of a Deployment Right in which case Customer will receive one (1) master copy of each category of Software listed in the applicable Order and shall have the right to (i) freely deploy such Licenses within its network in conformance with, the Endpoint Count and the Product Category Guide and (ii), download and use as many copies of the GUI and the Documentation as necessary to support Customer’s internal use of the Products. To the extent Customer purchases Software without a Deployment Right, Customer may only (x) use one (1) copy of the Software as installed on Hardware provided hereunder, (y) download electronically a reasonable number of copies of the Software for use with virtual appliances, and (z) download and use as many copies of the GUI and the Documentation as necessary to support Customer’s internal use of the Products. Customer may make a reasonable number of copies of the Software for backup purposes, provided that Forescout’s proprietary notices are contained in such copies.

**2.3. 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, 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 international, federal, state, or other applicable laws.

**2.4 Evaluation and Beta Licenses.** Customer may submit an Order for: (i) an evaluation License for Products (“Evaluation Products”) or (ii) a beta License to test products before they become generally available (“Beta Products”, and collectively with the Evaluation Products, “Test Products”). Customer may not use the Test License for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. Customer’s right to use the Test Products automatically expires at the end of the term set forth in the applicable Order or Forescout request form (the “Test Period”). Notwithstanding any other provision of this Agreement, the Test Products are provided “AS IS” without warranty or support of any kind, express or implied. WITH RESPECT TO THE TEST PRODUCTS, TO THE MAXIMUM EXTENT PERMITTED BY LAW, FORESCOUT SHALL NOT 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 CUSTOMER 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. IN NO EVENT SHALL FORESCOUT’S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED FIVE THOUSAND U.S. DOLLARS (\$5,000). IF CUSTOMER SUBSEQUENTLY LICENSES A PRODUCT FOR PRODUCTION USE THAT IT IS CURRENTLY TESTING, CUSTOMER’S LICENSE TO THE TEST PRODUCTS SHALL IMMEDIATELY TERMINATE AND CUSTOMER EXPRESSLY AGREES THAT, UNLESS IT HAS A SEPARATE SIGNED LICENSE AGREEMENT GOVERNING THE USE OF THE PRODUCTS, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN THE USE OF SUCH PRODUCTION PRODUCTS. Either Party may terminate the License associated with a Test Product upon written notice at any time for any reason and without liability. All Test Products will be shipped DAP (Incoterms 2010) inclusive of all shipping costs. Customer must utilize their own customs broker for importation of the Products. Customer’s assigned agent will act as importer of record and will be responsible for payment of any import duties, taxes and fees. At the end of the Test Period, Customer will return the Products and Documentation in full to ForeScout at ForeScout’s expense. Customer is responsible, and shall reimburse Forescout, for loss of or damage to the Hardware while it is in Customer’s possession. In lieu of returning the Hardware, Forescout, in its sole discretion, may request that Customer physically destroy the Hardware, which at a minimum must include complete destruction of the hard drives. For Software, Forescout, in its sole discretion, may request that Customer physically overwrite the Software at a level of data erasure that does not allow software-based or hardware-based recovery. Upon Forescout’s request, Customer shall provide Forescout a certificate of destruction evidencing compliance with the foregoing with respect to such Hardware and Software.

**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 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 (i) 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), (ii) extract the Software from the Hardware, (iii) incorporate the Software in whole or in part in any other software or product, (iv) modify the Software, develop derivative works of the Software or allow others to do so, or (v) 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, evaluation, beta, 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. Separate terms and conditions will apply to Limited Use Products. 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 17.2 (*Audit*) below.

**4. SERVICE PROVIDERS.** If Customer has arranged for a service provider (other than Forescout) 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 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 resold by Forescout or 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, subject to the third party’s terms and conditions 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 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 WorkProduct.

**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, sublicensable, 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 (i) 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, and (ii) accessing, collecting or using Customer's statistical data to analyze and improve the features, functionality and support of the Products.

## 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. Forescout further represents and warrants that as of the date a Product is shipped or for a virtual Product, the date on which it is first made available electronically, the Software will not contain any viruses, software traps, worms, trap doors, back doors, Trojan horses, or other similar malicious, disruptive or corrupting program code, programming instruction, or software, or similar items. 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) replace the Hardware, or (b) use commercially reasonable efforts to make the Software perform substantially in accordance with the accompanying Documentation; and (ii) with respect to Section 7.3 and 7.4, Forescout shall re-perform the applicable ActiveCare and 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 ActiveCare and Professional Services, within thirty (30) days following the date of completion of the applicable ActiveCare and 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 or a third party acting on Forescout's behalf; (iii) installation, operation, repair, or maintenance of the Products not in accordance with the Documentation; and (iv) abnormal physical, electrical or 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 7.5 (*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 gross negligence 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; or (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. Furthermore, Forescout will have no indemnification obligations hereunder if 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 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) in the case of Software, 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, for a pro-rata refund as follows: (i) for perpetual Licenses, the License fees paid for the affected Software less an allowance for use based on a 36 month straight line depreciation method; (ii) for term-based Licenses, the License fees paid for the affected Software for the balance of the current term; and/or (iii) for Professional Services, the fees paid for the affected Professional Services for the duration of the Professional Services purchased but not yet delivered.

**8.6. Entire Obligation.** Subject to Sections 8.3 and 8.4, Section 8.2 and 8.5 states Forescout's entire liability, and Customer's exclusive remedy, with respect to any infringement 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 TOTAL FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE CLAIM. 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 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 or 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; (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 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 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 Crimea, Cuba, Iran, 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") to any Restricted Person, 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>). 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 Forescout is not a Business Associate as defined by HIPAA and 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 as defined in HIPAA. Nonetheless, Customer will use commercially reasonable efforts to comply with applicable personal data protection and privacy laws where the Products are used.

**12.1 Safeguards for Cross-border Transfers.** Forescout will maintain appropriate safeguards with respect to the Personal Data (as defined in the Forescout Data Processing Addendum) and make available to data subjects the rights and legal remedies with respect to the Personal Data as required under Article 46(1) of the GDPR. In this respect, Forescout agrees to maintain in effect a self-certification under the EU-US and Swiss-US Privacy Shield Frameworks of the US Department of Commerce as set forth in <https://www.privacyshield.gov> with sufficient scope to address the processing of the Personal Data covered under this Agreement. To the extent such self-certification does not exist, has expired or is otherwise not

available to Forescout, Forescout agrees to be bound by the terms of the Forescout Data Processing Addendum.

**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 are not included in the purchase price of the Products, and must be purchased separately.

**16.2. Professional Services.** If purchased by Customer, Forescout will perform and invoice Professional Services on a time and materials basis per the estimates stated in a Datasheet or SOW, as applicable. Customer acknowledges that it may need to purchase additional Professional Services if Forescout is unable to complete the anticipated Professional Services scope within the estimated time. Unless travel expenses are included in the Professional Services SKU used in the SOW or Datasheet, Customer shall reimburse Forescout for approved expenses reasonably incurred in the performance thereof, and Forescout shall provide valid receipts and other reasonable substantiation to Customer upon request. If the Parties need to make changes to the SOW during the engagement to address changes in scope or cost, the Parties will complete and execute a change order.

**17. DEPLOYMENT REPORT AND AUDIT.** On Forescout's written request, but no more than once annually, Customer will furnish to Forescout: (a) a certification indicating the Products are being used in accordance with this Agreement; and (b) a copy of a License usage report generated from the Software, (collectively, a "Deployment Report"). If Customer's License usage exceeds the number of Licenses purchased, then Customer will promptly pay Forescout for actual usage based on Forescout's then current list prices (including pro-rated ActiveCare), or as otherwise mutually agreed by the Parties. With five (5) business days' prior written notice, but no more than once annually, Forescout may itself or through an independent auditor review Customer's Software License usage and related records during Customer's normal business hours to confirm compliance with this Agreement. Customer will provide Forescout, or the auditor, with access to the relevant records and facilities for the audit. Forescout will treat all information disclosed by Customer under this Section 17.1 as Confidential Information and will only use or disclose such information as required by law or to enforce its rights under this Agreement.

**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 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. The initial term of ActiveCare and/or any term-based License will commence on the effective date identified in an Order as applicable ("*Initial Term*") unless terminated earlier as set forth below. Subject to Section 19.2, following expiration of the Initial Term, ActiveCare and/or any term-based License 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 with respect to ActiveCare and/or any term-based License 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.

**19.2. Termination.** Either Party may terminate this Agreement, in whole or in part immediately, for the other Party's material breach that is not cured within thirty (30) days of the date of receipt of notice of the breach from the non-breaching Party. If provided in a Forescout quote, as referenced in an applicable Order, or otherwise set forth in a document mutually agreed in writing, Customer may terminate a multi-year, term-based License on each twelve (12) month anniversary (or other time period as identified within the Order) by providing sixty (60) days' prior written notice to Forescout. Without limiting any other rights hereunder, (i) a failure to make any past due payments within the cure period; or (ii) License usage exceeding the number of Licenses purchased by more than 5% shall be deemed a material breach. 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 (i) 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 and (ii) provide a final Deployment Report. The termination of this Agreement shall immediately terminate any and all Orders and SOWs executed hereunder, as well as any term-based License. Customer shall retain a perpetual license to Software Licenses identified in an Order, put into production use, fully paid up and as reported in good faith by

Customer in the form of a Deployment Report as defined above. Termination of the Agreement, or any portion thereof, shall not entitle Customer to a refund of fees or credit, including, without limitation, any unearned payments made in advance to Forescout. 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 Confidential Information, or return the foregoing to Forescout's election. Upon Forescout's request, Customer shall provide Forescout a certificate of destruction evidencing compliance with the foregoing.

**19.5. ActiveCare and/or Term-Based License Reinstatement.** In no event shall Forescout be responsible for extending a term-based License or providing ActiveCare support for any Products if terminated pursuant to the terms of this Agreement. In order for Customer to resume lapsed ActiveCare and/or a term-based License as the result of termination, (i) Forescout must approve the Order, as determined in its sole discretion, if the termination was due to Customer's material breach; and (ii) Customer must (a) renew ActiveCare and/or the term-based License 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 Term shall be the date following the termination date of the previous 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 (*Grant of License; Deployment Rights; 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*), 13 (*Non-Solicitation*), 14 (*Publicity*), 15 (*Non-Solicitation*), 17 (*Deployment Reports and Audit*), 18 (*U.S. Government Restricted Rights*); 19 (*Term and Termination*), and 20 (*General*).

## 20. GENERAL.

**20.1 Supplemental Terms.** From time to time, Forescout may offer Affiliate Products under this Agreement and as identified within the Forescout proposal or quote. The Affiliate Product Schedule is available here: <https://www.forescout.com/company/legal/> and by this reference incorporated herein. The Affiliate Product Schedule applies to the Products described therein and sets forth different or supplemental terms related thereto including, without limitations applicable licensing, support, and warranty terms. "Affiliate Products" means the hardware, software, maintenance and professional services offered by a Forescout Affiliate subject to the terms of this Agreement as supplemented by the Affiliate Product Schedule.

**20.2 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.

**20.3 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.

**20.4 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) agree not to commence any such proceedings except in such courts; and (iii) waive any objection to the laying of venue of any such proceedings in the state or federal courts located in the Venue.

**20.5 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 Customer, 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.

**20.6 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.

**20.7 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.

**20.8 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.

**20.9 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.

**20.10 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 unless mutually agreed by the Parties authorized representatives in writing.

**20.11 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 either Party unless it is in writing and signed by both Parties. 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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