

Not for Resale License Agreement

This Not For Resale (“NFR”) License Agreement (“Agreement”) is a legal agreement between you (“Partner”), the entity on whose behalf Partner is authorized to enter this Agreement and all of Partner’s Affiliates that may use the Products, and **ForeScout Technologies, Inc.** and each of its subsidiaries, including ForeScout Technologies BV (formerly SecurityMatters BV) and ForeScout Technologies Americas Inc. (formerly SecurityMatters Americas Inc.) (collectively, “ForeScout”). If Partner does not agree to the terms and conditions of this Agreement, Partner must promptly return the Products and any accompanying items (including printed materials and binders or other containers) to the place from which Partner obtained them. If Partner purchases the Products for use by any of its Affiliate(s), Partner will ensure that such Affiliate(s) comply with the terms and conditions of this Agreement. Partner’s standard terms and conditions of sale, purchase order or other documents are for Partner’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.

1. DEFINITIONS.

“**Affiliate**” means an entity that controls (i.e. parent), is controlled by (i.e. subsidiary), or under common control with (i.e. sister) a party to this Agreement.

“**Affiliate Products**” means SilentDefense or any other product offered by a ForeScout Affiliate.

“**Distributor**” means a company that purchases Products for distribution to Resellers and, subject to prior written approval by ForeScout, directly to End Users, subject to the terms of this ForeScout Distribution Agreement.

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

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

“**Hardware**” means ForeScout’s branded hardware appliance or any other third party hardware provided for evaluation purposes.

“**Order**” means the applicable ordering document, acceptable to ForeScout, executed by Partner that refers to this Agreement, and that describes in greater detail Partner’s order-specific information, including, quantity, charges, billing information, pricing, payment, shipping information and the Products, Professional Services and Support Service ordered.

“**Partner**” means Distributor, Reseller, or Technology Partner.

“**Product**” means the Hardware and the Software that Partner has ordered, and ForeScout has agreed to provide, as indicated on the applicable Order, including without limitation the Affiliate Products.

“**Reseller**” means a company or value-added reseller that purchases Products and/or Services for resale to End Users subject to the terms of their ForeScout Indirect Reseller Agreement.

“**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.

“**Support Service**” means the ActiveCare support policy set forth at <http://www.forescout.com/activecare-maintenance-and-support-policy/>, or with regard to the Affiliate Products, the support policy set forth at <https://www.forescout.com/wp-content/uploads/2019/03/securitymatters-technical-support-policy.pdf>.

“**Technology Partner**” means a company or ForeScout technology and/or alliance partner that desires to achieve product interoperability between ForeScout Products and their products subject to the terms of a current and active form of technology partner agreement with ForeScout.

“Territory” means the geographic territory in which Partner has been authorized to market and/or sell Products pursuant to Partner’s separate Reseller, Distributor or Technology Partner agreement with ForeScout.

2. GRANT OF LICENSE; RESERVATION OF RIGHTS.

2.1. LICENSE. Provided Partner is in compliance with the terms and conditions contained herein, ForeScout hereby grants Partner a nonexclusive, limited license, for the earlier of (i) the term of Partner’s Reseller, Distributor or form of technology partner agreement with ForeScout, as applicable; or (ii) the term set forth in the Order (the “License Term”), to use the Products solely to demonstrate, market, and evaluate Products to End Users and prospective End Users in the Territory, or for development purposes with regard to Technology Partners. Partner may not use the Products for any other purpose, including without limitation to sell the Products to any End User or other third party, except Distributors may sell the Products to Distributor’s Resellers for the purposes hereunder and so long as Distributor binds such Resellers to this Agreement in form satisfactory to ForeScout in its sole discretion. Unless otherwise agreed by the parties in writing, Partner may (i) use one (1) copy of the Software solely as installed on the Hardware or downloaded electronically; (ii) download and use as many copies of the GUI and the Documentation as necessary to support Partner’s use of the Products. Partner is allowed to make a reasonable number of copies of the Products for backup purposes only, provided that ForeScout’s proprietary notices are contained in such copies.

2.2. Reservation of Rights. Except for the limited license 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 Partner 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.

2.3. Restrictions. This license is subject to a maximum endpoint count or throughput capacity per sensor, as applicable, and any other licensing restrictions set forth in the Documentation and Order. Additionally, the license is solely for Partner’s marketing, demonstration, and evaluation use (and development use with regard to Technology Partners) and does not include the right to sublicense the Software. Partner may not use the Software for rental, timesharing, subscription service, hosting or outsourcing or to sublicense, rent, lease or make the Software available to any third party. Partner acknowledges that the Software in source code form remains a confidential trade secret of ForeScout and/or its licensors, and Partner may not 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. Partner

may not 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. Partner 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.

3. THIRD PARTY PRODUCTS AND APPLICATIONS.

Partner 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 Partner of any third party vendor product is solely between Partner and such vendor, and Partner agrees that ForeScout has no liability or obligation to Partner for those products or applications, the results or use thereof, or the effect that the use thereof has on the operation of the Products.

4. PRICE, PAYMENT AND SHIPMENT.

4.1. Price and Payment. The Product’s purchase price, including any licensing fees and any related charges shall be included in the applicable Order. All invoices shall be payable by Partner within thirty (30) days of the date of each invoice. ForeScout shall subject all past due payments of undisputed amounts to interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate.

4.2. Taxes. Pricing for Products and any ForeScout services ordered hereunder is exclusive of all taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity. Partner agrees to pay all such taxes due in respect of the Products or services which will be added to the total amount invoiced to Partner, unless Partner furnishes ForeScout with a valid resale or exemption certificate. If Partner is required by law to make any deduction or to withhold from any amount payable to ForeScout hereunder, then the amount payable by Partner upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, ForeScout receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount ForeScout would have received and retained in the absence of such required deduction or withholding. In the event that ForeScout is required to or does pay any taxes for which Partner is responsible, Partner, upon being advised of these payments, will immediately repay the amount thereof to ForeScout.

4.3. Shipment. For shipments in the United States, Products will be shipped FOB Origin. For international shipments, Partner will take delivery of Products by method of FCA Origin (Incoterms® 2010z. In each case, Products are deemed accepted and title to Hardware transfers at shipping point. Partner will provide shipping carrier, method, and account number, contacts, phone numbers, emails, and freight forwarder/broker of record information. If an export license is required, Forescout shall obtain exporting license/authorization and fulfill reporting requirements of such licenses (except for restricted countries under applicable U.S. law). In respect of U.S. Origin goods, Forescout is responsible for providing the forwarding agent with the U.S. electronic export information filing in the Automated Export System ("AES"). The forwarding agent shall be acting as Forescout's agent for the limited purpose of filing the U.S. electronic export information in the AES. Partner will ensure that the forwarding agent is provided accurate and complete information and documents reflecting the filing in the AES. Any import licenses required by territory destinations are Partner's responsibility. All Products will be packaged for shipment in accordance with the packaging regulations in force in the territory. Partner will provide any special packaging requirements to Forescout for review and preparation prior to shipment. Shipment will be made to Partner's identified facilities or freight forwarder. Partner will be responsible for all costs related to shipping, freight, insurance, taxes, and customs charges. Shipping charges will be collected on delivery or, if prepaid by Forescout, will be subsequently invoiced to Partner. Partner is obligated to obtain insurance against damage to the goods being shipped.

4.4. No Returns or Exchanges. Except for returns expressly permitted in in this Agreement), Forescout shall not accept any returns or exchanges of Products once the Products have been shipped.

5. SUPPORT.

Partner is required to purchase Support Service for the term of the Product license(s) granted hereunder. Partner's purchase price for the applicable Support Service shall be set forth on the applicable Order.

6. WARRANTY DISCLAIMER.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, PARTNER ACKNOWLEDGES AND AGREES THAT THE PRODUCT IS FOR THE LIMITED PURPOSES SET FORTH HEREIN, NOT-FOR-RESALE PURPOSES ONLY, AND IS PROVIDED "AS IS." FORESCOUT AND ITS SUPPLIERS MAKE NO WARRANTIES IN CONNECTION WITH THE PRODUCTS (EXPRESS IMPLIED, STATUTORY OR OTHERWISE). FORESCOUT AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

7. LIMITATION OF LIABILITY.

7.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, FORESCOUT, ITS LICENSORS, AFFILIATES, AGENTS, AND SUPPLIERS 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 PARTNER 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.

7.2. IN NO EVENT SHALL FORESCOUT'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED FIVE THOUSAND DOLLARS (\$5,000).

THE LIMITATIONS OF THIS SECTION 7 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

8. CONFIDENTIALITY.

Partner acknowledges that the Software, and all documents provided with the Hardware contain Forescout's confidential trade secret information ("Confidential Information"). Confidential Information will also include any information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party") in connection with Partner's use of the Products, provided that such information should be reasonably understood by the Receiving Party as being confidential or proprietary. The Receiving Party will keep the Confidential Information in confidence, in the same manner as the Receiving Party maintains its own confidential information, and in no event with less than a reasonable degree of care. The Receiving Party will use the Confidential Information only for the purpose described in this Agreement. The Receiving Party will limit the disclosure of Confidential Information solely to those employees and consultants having a need-to-know, provided that each such employee and consultant is under a written confidentiality agreement containing confidentiality obligations no less protective than those contained in this Agreement. The Receiving Party will make no written or electronic copies of the Confidential Information, except as reasonably necessary to perform its obligations under this Agreement. The Receiving Party may disclose the Confidential Information to the extent required by a court of law or government regulatory body, but first the Receiving Party will give the Disclosing Party prompt notice to allow the Disclosing Party reasonable opportunity to obtain a protective order against such disclosure. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission by the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party without a confidentiality obligation; (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (iv) is independently developed by the Receiving Party without use of or reference to Confidential Information.

9. COMPLIANCE WITH LAWS.

9.1. General. Each party will comply fully with all international and national laws and regulations that apply to the Products and to Partner's use thereof including but not limited to all import and export laws and regulations.

9.2. Partner will indemnify, to the fullest extent permitted by law, ForeScout from and against any fines or penalties that may arise as a result of its breach of this Section 9.

10. U.S. GOVERNMENT RESTRICTED RIGHTS.

This Section 10 applies only if Partner 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 Partner is a Government End User, ForeScout hereby identifies the Software and Documentation, and, to the extent applicable, Partner 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, Partner may provide to a Government End User or, if Partner is a Government End User, such Government End User will acquire, the Software and Documentation with only those rights set forth in this Agreement.

11. TERM AND TERMINATION.

11.1. Termination. ForeScout may terminate this Agreement at any time if Partner is in breach of any of the material terms or conditions provided herein (including Partner's payment obligations), and such breach remains uncured more than thirty (30) days following receipt of ForeScout's written notice of such breach. In addition, ForeScout may terminate this Agreement immediately if Partner (i) no longer has a valid Partner agreement with ForeScout as described herein and as determined in ForeScout's sole discretion, or (ii) 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.

11.2. Effect of Termination. Upon any termination of this Agreement, Partner shall immediately cease using the Products, destroy the Products (and its accompanying Documentation) or return the Products (and its accompanying Documentation) to

ForeScout. Upon ForeScout's request, Partner shall provide ForeScout a certificate of destruction evidencing compliance with the foregoing with respect to such Products. Any Section or provision of this Agreement, that by its nature should reasonably survive termination hereof, shall survive in accordance with their respective terms.

12. GENERAL

12.1. Independent Contractors. The relationship of ForeScout and Partner 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.

12.2. 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 remedy or control.

12.3. 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. Partner irrevocably and unconditionally (i) consents 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 or 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.

12.4. 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 in the signature block below. If to ForeScout, all notices shall be sent to generalcounsel@forescout.com or to 190 W. Tasman Drive, CA, 95134, USA; Attention: General Counsel.

12.5. 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.

12.6. Headings. The headings used in this Agreement are for ease of reference only and will not be used to interpret any aspect of this Agreement.

12.7. Assignment. Partner 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 entity under common control with that party; (ii) any successor in interest to such party by way of merger or consolidation located in the United States; 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.

12.8. Entire Agreement. This Agreement constitutes the entire agreement between ForeScout and Partner 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. 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.

12.9. 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 original signatures.

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