



**FORESCOUT TECHNOLOGIES, INC.
END USER LICENSE AGREEMENT**

**NOTE REGARDING EARLY AVAILABILITY PRODUCTS, EVALUATION PRODUCTS AND BETA PRODUCTS:
THIS END USER LICENSE AGREEMENT APPLIES ONLY TO GENERAL AVAILABILITY PRODUCTS THAT YOU HAVE
PURCHASED.**

This End User License Agreement (“Agreement”) is a legal agreement between you (“Customer”), the entity authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I, as may be revised from time to time, and all of Customer’s Affiliates that may use the Products, and **ForeScout Technologies, Inc.** (“ForeScout”). If Customer does not agree to the terms and conditions of this Agreement, Customer must promptly return the Products and any accompanying items (including printed materials and binders or other containers) to the place from which Customer obtained them. If Customer purchases the Products for use by any of its Affiliate(s), Customer will ensure that such Affiliate complies with the terms and conditions of this Agreement. Customer’s standard terms and conditions of sale, the underlying purchase order or other documents are for Customer’s convenience only and any terms set forth therein that are inconsistent with, vary from, or add to the terms and conditions set forth in this Agreement shall not be binding on ForeScout unless agreed to in writing by ForeScout and are hereby rejected. This Agreement is binding on the parties to the extent Products are ordered by Customer pursuant to the GSA Schedule contracts.

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.

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

“Device Count” is the maximum number of Devices monitored by the Products, as specified in the Order, using either a MAC address and/or IP address, whether onsite, offsite or detected by the Products via third-party integrations. For purposes of this definition, “Devices” include user endpoints (e.g., laptops, tablets and smartphones), network infrastructure devices (e.g., switches, routers and access points), non-user devices (e.g., printers, IP phones, security/medical/manufacturing equipment), and virtual machines. A Device may be counted more than once if it uses multiple MAC addresses and/or IP addresses. Device information is retained by the Products, whether the Device is online or offline, from initial detection until the information is purged, based on policies selected by Customer. The terms “endpoint” or “device” used in any documentation provided by ForeScout shall mean a Device for the purposes of the Device Count.

“Documentation” means the technical documentation or specifications applicable to any given Product.

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

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

“Hardware” means ForeScout’s proprietary hardware appliance.

“Module(s)” means the Base Modules and Extended Modules.

“Order” means the applicable ordering document, acceptable to ForeScout, for the benefit of Customer that refers to this Agreement, and that describes in greater detail Customer’s order-specific information, including, but not limited to, Customer’s billing information, lists of Products ordered, pricing, payment and shipping information.

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

“Software” means the software programs developed by ForeScout that are installed on the Hardware or that are downloaded electronically which provide the network scanning functionality, including the GUI and Plugins, in object code form, as well as any modifications, error corrections, bug fixes, or other updates thereto, and any associated media, online or printed materials and documentation that may be provided in connection with the Software. “Software” does not include any Third Party Applications.

“Third Party Applications” means certain products, links, resources, plugins or services developed or sourced from third parties but by made available to Customer by ForeScout for Customer’s use in connection with the Products.

2. GRANT OF LICENSE; RESERVATION OF RIGHTS.

2.1. License. ForeScout hereby grants Customer a nonexclusive, limited license, solely for Customer’s internal business operations and solely to support the Device Count attributed to each Product that is specified in the applicable Order accepted by ForeScout, to (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 Customer’s use of the Products. Customer 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 Customer to the Software in violation of this Agreement, all of which contain valuable trade secrets of



ForeScout and/or its licensors. The use license described herein is not a sale of the Software or any copy of it, nor is it a waiver of the rights of ForeScout under U.S. copyright laws or any other federal, state, or other applicable laws.

3. LICENSE RESTRICTIONS.

This license is for Customer's internal use only. Except as expressly provided in this Agreement, Customer may not, and may not permit any third party to, use the Software for rental, timesharing, subscription service, hosting or outsourcing or to sublicense, lend, rent, lease or make the Software available to any third party. Customer acknowledges that the Software in source code form remains a confidential trade secret of ForeScout and/or its licensors, and Customer may not, and may not permit any third party to, reverse engineer, decipher, decompile, modify or disassemble the Software or the Hardware or otherwise attempt to derive the source code of the Software (except as authorized by law), extract the Software from the Hardware, incorporate the Software in whole or in part in any other software or product, or modify the Software, develop derivative works of the Software or allow others to do so, or to attempt to do any of the foregoing, without the express prior written consent of ForeScout. If Customer makes any modifications to the Software, including any derivative works, ForeScout shall own such modifications. Except as expressly provided herein, Customer may not, and may not permit any third party to, reproduce the Software or remove any copyright, trademark, proprietary rights, disclaimer or warning notices placed on, included in or embedded in any part of the Hardware or the Software. Customer will not, and will not permit any third party to, disclose the results of any benchmark, functionality or performance tests run on the Software to any competitors of ForeScout. If Customer purchases any Products designated for a specified, limited use in a non-production environment, including without limitation, disaster recovery or lab testing ("Non-Production Products"), Customer may only use such Non-Production Products for the limited purpose for which they were purchased and may not use such Non-Production Products to increase Customer's total Device Count on its production network. If Customer uses the Non-Production Products in violation of this Section, ForeScout reserves the right to invoice Customer for applicable fees as provided in Section 9 (*Audit*).

4. THIRD PARTY SERVICE PROVIDERS

If Customer has arranged for a third party service provider to manage the Products on behalf of Customer ("Service Provider"), Customer may sublicense the Products to the Service Provider only for the purpose contemplated by this Agreement, provided that Service Provider complies with the terms and conditions hereof and Customer will be responsible for such compliance.

5. THIRD PARTY PRODUCTS AND APPLICATIONS.

ForeScout does not warrant any Third Party Applications, whether or not such Third Party Applications are designated by ForeScout as "certified," "approved," "recommended" or are otherwise provided by a third party that is a member of a ForeScout partner program. Any purchase or use by Customer of any Third Party Application is solely between Customer and the applicable third party provider, and Customer agrees that ForeScout has no liability or obligation to Customer for such Third Party Applications, the results of the use thereof, or the effect that the use thereof has on the operation of the Products.

6. PRICE, PAYMENT AND SHIPMENT.

6.1. Scope. Customer will purchase Products from a distributor or reseller authorized to sell under the GSA Schedule contracts, and accordingly, the applicable price and payment terms are determined by Customer's agreement with such distributor or reseller.

6.2. No Returns or Exchanges. Except for returns permitted in accordance with Section 7.3 (*Remedies*), ForeScout shall not accept any returns or exchanges of Products once the Products have shipped.

7. LIMITED WARRANTIES.

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

7.2. Hardware Warranty. ForeScout warrants to Customer that for a period of ninety (90) days from the date of delivery of the Products that 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. Warranty Remedies ForeScout's sole and exclusive obligation and Customer's sole and exclusive remedy under this limited warranty shall be, at ForeScout's election, either: (i) replacement of the Hardware, or (ii) ForeScout's commercially reasonable efforts to make the Software perform substantially in accordance with the accompanying Documentation. The above remedies are available only if Customer promptly notifies ForeScout in writing within the applicable warranty period. If Customer discovers within the applicable warranty period that the Hardware or 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 the 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 thirty (30) days, whichever is longer.

7.4. 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 Device Count, (ii) any alteration or modifications to the Products, except by ForeScout; (iii) installation, operation, repair, or



maintenance of the Products not in accordance with instructions supplied by ForeScout; and (iv) abnormal physical or electrical stress or abnormal environmental conditions, accident, abuse, or misuse. In addition, the warranties are void if Customer is using the Products for beta, evaluation, testing or demonstration purposes for which separate terms and conditions apply.

7.5. 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, TITLE OR QUALITY OF SERVICE. NO WARRANTIES SHALL ARISE UNDER THIS AGREEMENT FROM COURSE OF DEALING OR USAGE OF TRADE. FORESCOUT DOES NOT WARRANT THAT THE HARDWARE, THE SOFTWARE OR DOCUMENTATION IS FREE OF THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE HARDWARE AND THE SOFTWARE TO ACHIEVE CUSTOMER INTENDED RESULTS, AND FOR THE OPERATION, USE AND RESULTS OF THE HARDWARE AND THE SOFTWARE. Without limiting the foregoing, Customer is responsible for the supervision, management and control of the use of the Hardware and the Software and any output of the Hardware and the Software, including but not limited to proper installation and establishment of adequate backup and archival processes to prevent adverse consequences in the event of a malfunction. 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.

8. SUPPORT AND PROFESSIONAL SERVICES.

8.1. ActiveCare Support. If Customer has separately ordered maintenance and support services through ForeScout's ActiveCare program, the terms of such program are set forth in a separate agreement. Maintenance and support is not included in the purchase price of the Products, and must be purchased separately.

8.2. Professional Services. If Customer requests that ForeScout provide professional services in connection with the deployment, implementation, training, or configuration of the Products, such professional services are provided pursuant to ForeScout's standard professional services terms set forth in a separate agreement. Professional Services are not included in the purchase price of the Products, and must be purchased separately.

9. AUDIT.

During the term of this Agreement, and for one (1) year following termination of this Agreement, ForeScout (including its independent auditor) shall have the right to inspect and audit Customer's records to verify Customer's compliance with the terms of this Agreement as long as ForeScout and/or its independent auditor comply with all of Customer's reasonable security requirements, provided that Customer has given ForeScout such security requirements in advance. In such event, ForeScout shall provide Customer with at least thirty (30) days' prior written notice of such audit and shall conduct the audit in a manner so as not to unreasonably interfere with Customer's business. Customer shall provide ForeScout reasonable assistance and access to information in relation to the audit. If an audit reveals any unauthorized reproduction, installation, or use of the Products, including but not limited to use of the Products for Devices in excess of the permitted Device Count, at ForeScout's sole discretion, Customer will either: (i) remedy the non-compliance within thirty (30) days; or (ii) ForeScout will invoice the Customer and the customer will pay the undisputed applicable fees due attributed to such non-compliance.

10. INDEMNITY.

10.1. Indemnification. ForeScout agrees to, and shall, indemnify, defend to the extent permitted by 28 U.S.C. § 516 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 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 (a "Claim").

10.2. Procedure. ForeScout's obligations hereunder shall be conditioned on Customer promptly notifying ForeScout of any such Claim and permitting ForeScout to intervene in the claim through counsel of ForeScout's choosing expense, and to assume control over the defense and settlement of such Claim to the extent permitted by 28 USC 516; provided however, that: (i) ForeScout shall keep Customer informed of, and consult with Customer in connection with the progress of such litigation or settlement; and (ii) ForeScout shall not have any right, without Customer'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 Customer's part, or requires any specific performance or non-pecuniary remedy by Customer.

10.3. Exceptions. Notwithstanding the foregoing, ForeScout will have no obligation to Customer under this Section 10 to the extent that any such Claim arises or results from (i) the unauthorized or improper use by Customer of the Products provided by ForeScout under this Agreement; (ii) the combination of the Products provided by ForeScout under this Agreement with other products or services not provided by ForeScout, to the extent that such Claim would not have resulted except for such combination; (iii) the alteration or modification of the Products by or for Customer without ForeScout's written consent, if such Claim would have been avoided in the absence of such alteration or modification; or (iv) the Claim could be avoided by Customer's use of alternative products provided to Customer by ForeScout that perform in a substantially similar fashion as the Product at issue.



10.4. Remedies. Should Software provided under this Agreement become, or in ForeScout's reasonable opinion be likely to become, the subject of a Claim, ForeScout may, at its sole discretion and expense, either: (i) procure for Customer the right to exercise its rights under this Agreement; or (ii) replace or modify the Software to make it non-infringing, provided that the same functions are performed by the replaced or modified Software. If ForeScout determines in its sole discretion that (i) or (ii) are not commercially reasonable, ForeScout shall so notify Customer in writing and terminate Customer's licenses to such affected Software under this Agreement. Upon ForeScout's written notice of the termination of Customer's license pursuant to this Section 10.4, Customer shall return to ForeScout all affected Software remaining in Customer's possession for a pro-rata refund of those fees paid by Customer to ForeScout for the affected Software calculated over a 36 month period on a straight line basis.

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

11. LIMITATION OF LIABILITY.

11.1. EXCEPT FOR FORESCOUT'S INDEMNITY OBLIGATIONS UNDER SECTION 10 AND CONFIDENTIALITY BREACHES UNDER SECTION 13, TO THE MAXIMUM EXTENT PERMITTED BY LAW, FORESCOUT, ITS LICENSORS, AFFILIATES, AGENTS, SUPPLIERS, DISTRIBUTORS AND RESELLERS 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.

11.2. EXCEPT FOR FORESCOUT'S INDEMNITY OBLIGATIONS UNDER SECTION 10 AND CONFIDENTIALITY BREACHES UNDER SECTION 13, IN NO EVENT SHALL FORESCOUT'S AGGREGATE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT(S) AT ISSUE. This limitation of liability is cumulative and not per incident (i.e., the existence of two or more claims will not enlarge this limit).

11.3. Customer acknowledges and agrees that ForeScout has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and result in consequential loss), and that the same form an essential basis of the bargain between the parties. THE LIMITATIONS OF THIS SECTION 11 SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

12. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from ForeScout's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13. CONFIDENTIALITY.

Customer 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 Customer'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 subject to a written 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 law, including, but not limited to the Freedom of Information Act, 5 U.S.C. § 552, 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.

14. COMPLIANCE WITH LAWS.

14.1. 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

14.2. Export Controls. Customer represents that it is not a "Restricted Person," which shall be deemed to include any person or entity: (i) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; or (ii) on any restricted person or entity list maintained by any U.S. governmental agency. Unless authorized by U.S. regulation or license, neither party will, in connection with the activities contemplated by this Agreement, export or re-export, directly or indirectly, any Products, including without limitation, any technical data, computer software, or any product (or any part thereof), process, or service that is the direct



product of any such technical data or computer software that has been received from the other party in connection with the activities contemplated by this Agreement (hereinafter referred to collectively or individually, “Controlled Products”) (a) to any country (or nationals thereof) in Country Group E of the Export Administration Regulations of the United States (“EAR”) or any other country subject to sanctions administered by the Office of Foreign Assets Controls (the then-current list can be found at <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>); (b) to any non-civil (i.e. military) end users or for any non-civil end uses in any country in Country Group D:1 of the EAR, as such list may be modified from time to time (the then-current lists can be found at <http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>); or (c) in violation of the International Traffic and Arms Regulation. The parties understand that countries other than the U.S. may restrict the import or use of strong encryption products or other items and may restrict such exports. The parties agree to comply with any such import or other restrictions. Each party represents and warrants that it is not currently debarred, suspended, or otherwise prohibited or restricted from exporting, re-exporting, receiving, purchasing, or otherwise obtaining any item, product, article, commodity, software or technology regulated by any agency of the U.S., and will immediately notify the other party in the event that any of the foregoing occurs.

15. U.S. GOVERNMENT RESTRICTED RIGHTS.

This Section 14 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 said clause is applicable. 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.

16. TERM AND TERMINATION.

16.1. Term. If Customer has purchased a perpetual license, the term of this Agreement shall be perpetual unless terminated in accordance with this Agreement. If Customer has purchased a subscription license, the term of this Agreement shall automatically terminate on expiration of the applicable subscription period set forth in the Order.

16.2. Termination. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 7101 *et seq.*, subject to the following exceptions: ForeScout may request cancellation or termination of the License Agreement if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process or if such remedy is otherwise ordered by a United States Federal Court. ForeScout shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Customer’s Contracting Officer. If this Agreement is terminated by Customer for convenience, any remedy that Customer wishes to seek will be between Customer and the distributor or reseller authorized to sell under the GSA Schedule contracts.

16.3. Effect of Termination. Upon any termination of this Agreement, Customer shall immediately cease using the Software, destroy the Software (and its accompanying Documentation) or return the Software (and its accompanying Documentation) to ForeScout. Upon ForeScout’s request, Customer shall provide ForeScout a certificate of destruction evidencing compliance with the foregoing with respect to such Software. Sections 2.2 (*Reservation of Rights*), 3 (*License Restrictions*), 4 (*Third Party Service Providers*), 9 (*Audit*), 10 (*Indemnity*), 11 (*Limitation of Liability*), 13 (*Confidentiality*), 14 (*Compliance with Laws*), 15 (*U.S. Government Restricted Rights*), 16 (*Term and Termination*), and 17 (*General*) shall survive any expiration or termination of this Agreement in accordance with their respective terms.

17. GENERAL.

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

17.2. Force Majeure. Excusable delays are governed by FAR 52.212-4(f).

17.3. Governing Law. To the extent permitted by law, this Agreement will be governed and construed under the Federal laws of the United States without giving effect to any choice of law principles that would require the application of the laws of a different jurisdiction.

17.4. Notices. All notices under this Agreement are required to be sent either via electronic delivery or to the principal addresses specified above 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 ForeScout, all notices shall be sent to generalcounsel@forescout.com or to 190 West Tasman, San Jose, CA 95134, USA; Attention: General Counsel.



17.5. 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.

17.6. 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.

17.7. Assignment. Neither party may assign or transfer this Agreement, nor any rights or obligations under this Agreement without the prior written consent of the other party. 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 with approval in accordance with FAR 42.12 and FAR 52.212-4(b). . This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the parties.

17.8. Entire Agreement. This Agreement constitutes the entire agreement between ForeScout and Customer with respect to the subject matter hereof, and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to such subject matter. No waiver, amendment or modification of any provision of this Agreement shall be enforceable against ForeScout unless it is in writing and signed by ForeScout. 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.

17.9. 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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