



**FORESCOUT TECHNOLOGIES, INC**  
**ACTIVECARE MAINTENANCE AND SUPPORT POLICY**

1. This ActiveCare Maintenance and Support Policy (“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 purchases the ActiveCare services for any of its Affiliate(s), Customer will ensure that such Affiliate complies with the terms and conditions of this Agreement. This Agreement is binding on the parties to the extent ActiveCare is ordered by Customer pursuant to the GSA Schedule contracts. **DEFINITIONS.**

“ActiveCare” means ForeScout’s support and maintenance services as described herein that are either ActiveCare Basic or ActiveCare Advanced.

“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.

“Error” means any of the three (3) severity level errors in the Products, as more fully described in **Exhibit A** (*Technical Support and Escalation Process*).

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

“Fix” means the repair or replacement of Product(s), including the Hardware, or the object or executable code of the Software, to remedy an Error.

“Hardware” means ForeScout’s proprietary hardware appliance or applicable hardware component.

“Premier Hours” means twenty-four (24) hours a day, seven (7) days a week, and three hundred and sixty-five (365) days a year during the Term.

“Product(s)” means the Hardware and the Software provided by ForeScout.

“Regular Hours” means 8:00AM to 5:00PM in Customer’s local time zone during the Term. If the Products are in multiple locations with different time zones, Customer shall designate the controlling time zone for determining Regular Hours.

“Service Packs” means a single installable package of minor updates, fixes and enhancements for the CounterACT software.

“Software” means the CounterACT software programs installed on the Hardware or downloaded electronically which provide the network scanning functionality, the Modules, Service Packs, bug fixes, and any other updates provided by ForeScout under this Agreement.

“Term” means the duration of the initial Term, as specified in the ActiveCare Certificate provided by ForeScout to Customer, and any renewal terms of the applicable ActiveCare services.

“Workaround” means a change in the procedures or instructions provided by ForeScout to Customer in writing to avoid an Error without substantially impairing Customer’s use of the Products.

## 2. FEES.

**2.1. Scope.** Customer will purchase ActiveCare 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.

## 3. TERM.

**3.1. Initial Term.** Provided that Customer has paid the applicable ActiveCare fees, the initial Term for each Product shall commence on the date such Product is shipped or, for a virtual Product, the date on which it is first made available electronically. A Product’s shipment date is set forth on the ForeScout packaging material.

**3.2. Intentionally Omitted.**

**3.3. Intentionally Omitted.**

**3.4. 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 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. In the event of any termination of this Agreement, Customer will be invoiced all earned and unpaid fees for ActiveCare services, whether invoiced or work in process, up to the effective date of termination. Any unearned payments made in advance to ForeScout are non-refundable. Sections 3.4 (*Termination*), 9 (*Ownership and Use*), 10 (*Warranties; Disclaimer*), 11 (*Confidential Information*), 13 (*Limitation of Liability*), 14 (*Non-Solicitation*), 15.3 (*Compliance with Laws*) and 16 (*General*) shall survive termination or expiration of this Agreement for any reason.

#### **4. SCOPE OF ACTIVECARE.**

**4.1.** ForeScout will provide ongoing maintenance and support services for Products as detailed below and address any Error in accordance with Section 5 (*Error Severity Levels*). In order to ensure consistent administration of support across its operations, Customer must elect either (i) ActiveCare Basic, or (ii) ActiveCare Advanced for *all* of its Products, whether existing or newly acquired. Any modification or amendment necessary to harmonize Customer's ActiveCare service level across *all* of Customer's Products shall be evidenced in writing and executed by an authorized representative for both parties. Customer will pay for any additional ActiveCare fees to increase the ActiveCare service level for its Products, provided, however, that Customer shall not be entitled to receive, and ForeScout shall have no obligation to provide, any refund, credit or other consideration in the event Customer elects to reduce its ActiveCare services level from ActiveCare Advanced to ActiveCare Basic. For purposes of clarity, Customer may not simultaneously receive ActiveCare Basic for certain Products and ActiveCare Advanced for other Products. All services provided under ActiveCare shall be conducted in the English language. ForeScout shall use commercially reasonable efforts to provide the services set forth in this Section 4 during Regular Hours for ActiveCare Basic or Premier Hours for ActiveCare Advanced, as applicable.

##### **4.1.1. ForeScout Support**

(i) Customer shall have direct access to ForeScout's support team ("ForeScout Support") through a list of persons designated by Customer in writing ("Authorized Contact Persons"). If Customer needs to add additional names to its Authorized Contact Persons list, Customer must notify ForeScout in advance, and the parties shall mutually determine an arrangement. Such Authorized Contact Persons must have adequate technical expertise or otherwise be trained in administering or managing the Products to assist ForeScout Support in troubleshooting Errors. All inquiries to ForeScout Support must be made by an Authorized Contact Person and ForeScout will have no obligation to accept calls directly from, or otherwise interact directly with personnel other than an Authorized Contact Person.

(ii) For ActiveCare Basic, ForeScout Support will respond to Customer during Regular Hours within the Severity Level Response Times. For ActiveCare Advanced, ForeScout Support will respond to Customer during Premier Hours within the Severity Level Response Times. Severity Level Response Times and contact methods are provided in **Exhibit A** (*Technical Support and Escalation Process*).

##### **4.2.1. Software Updates**

- (i) Customer shall receive software releases or updates that ForeScout, in its discretion, makes generally available without additional charge.
- (ii) Use of certain Modules may require Customer to purchase additional Products and/or third party products which are not provided to Customer under ActiveCare. In addition, Customer shall pay any Third-Party Sublicensing Fee(s), if any, required for use of a Module. A "Third-Party Sublicensing Fee" means any licensing fee required by a third party to allow the Module or other Software to interoperate with products or functionality provided by such third party.
- (iii) ForeScout will make commercially reasonable efforts to accommodate Customer's requests for modifications to the Software; however, ForeScout is under no obligation to incorporate those requests in future releases of any Software.
- (iv) In the event that Customer's ActiveCare Term has expired or is otherwise no longer valid, and Customer downloads and uses Modules, Service Packs, or other Software releases or updates that ForeScout makes generally available under ActiveCare, ForeScout will invoice Customer for the then-current list price (unless otherwise agreed) for one (1) year of ActiveCare fees.

##### **4.3.1. Advanced Hardware Replacement**

- (i) ForeScout will provide Hardware replacement for a defective Product in advance of Customer's return of the defective Product, provided that Customer immediately notifies ForeScout in writing of such defect and requests a Return Material Authorization ("RMA"). If ForeScout approves the return request and issues the RMA, (a) for shipments to U.S. locations under ActiveCare Basic, ForeScout will deliver the replacement Hardware within five (5) business days from ForeScout's issuance of the RMA; (b) for shipments to U.S. locations under ActiveCare Advanced, ForeScout will deliver the replacement Hardware within two (2) business days from ForeScout's issuance of the RMA. ForeScout cannot guarantee delivery times for shipments outside the U.S. as transportation issues, alternative routing, and customs clearance may delay delivery.
- (ii) Customer shall pack the Hardware to protect it from damage while in transit and ship the defective Hardware to ForeScout, with the RMA number clearly displayed on the exterior of the package.
- (iii) If, after attempting to repair the Hardware, ForeScout finds no Error in the Hardware, ForeScout reserves the right to charge Customer a reasonable replacement charge.
- (iv) If ForeScout does not receive the defective Hardware incorporating all original swappable components delivered by ForeScout, including, without limitation, hard drives, power supply and small form factor pluggables (SFPs), within thirty (30) days of ForeScout's issuance of the RMA, ForeScout will invoice Customer a replacement fee equal to the then-current list price (unless otherwise agreed) of the applicable Product.



## 5. ERROR SEVERITY LEVELS.

**5.1.** ForeScout will exercise commercially reasonable efforts to correct any Error reported to ForeScout by Customer in the Products. Upon ForeScout's receipt of notice of an Error, ForeScout will assign the Error one of the severity levels and may escalate the Errors in accordance with **Exhibit A** (*Technical Support and Escalation Process*).

**5.2.** Customer is responsible for providing sufficient information and data as reasonably requested to allow ForeScout to correct the Error. Customer acknowledges that ForeScout will not be responsible for any loss or damages resulting from a failure by Customer to provide such information or data, or otherwise assist ForeScout as and when reasonably requested. If ForeScout believes that any Error reported by Customer is not an Error caused by the Products, ForeScout will so notify Customer and will not be under any further obligation whatsoever to remedy the error.

**5.3.** If ForeScout fixes an Error in the most current Software release, then ForeScout shall have no obligation to fix the same Error in any prior Software release. Customer acknowledges that it will need to upgrade to the current Software release in order to obtain the benefit of such fix.

## 6. SUPPORT OF SOFTWARE VERSIONS.

**6.1. CounterACT.** ForeScout will always support the two (2) most recent CounterACT software releases that ForeScout makes generally available ("GA") to its customers. In addition, all GA CounterACT software releases are supported for at least twelve (12) months from their initial release date. Customer acknowledges that the resolution of any Error may require Customer to upgrade the CounterACT software to its current version. To allow Customer the time to upgrade to a supported CounterACT software release, any CounterACT release moving out of support will remain supported for an additional ninety (90) days following the release date of the most recent supported GA CounterACT release. CounterACT software releases are numbered x.y.z, where "x", "y" and "z" represent major, medium and minor releases respectively.

**6.2. Modules.** For each Module, ForeScout will always support the most recent version. In addition, ForeScout will continue to support a previous version of any given Module for twelve (12) months following the initial release date of its next version.

**6.3. Service Packs.** ForeScout will always support the most recent Service Pack version. In addition, ForeScout will continue to support a previous Service Pack version for twelve (12) months following the initial release date of the next version.

## 7. CUSTOMER RESPONSIBILITIES.

**7.1.** Customer agrees to: (i) ensure that its environment complies with all applicable ForeScout published system specifications; (ii) follow ForeScout's procedures, including those specified herein, when contacting ForeScout Support; (iii) provide ForeScout reasonable access to all necessary information, systems and personnel to resolve Errors; (iv) promptly implement all Software updates and Fixes provided by ForeScout under this Agreement; (v) update Software to its supported versions; and (vi) use reasonable efforts to internally resolve any support questions prior to contacting ForeScout Support.

**7.2.** During the Term, ForeScout may collect information regarding Customer's support inquiries and communications. Customer agrees that, as a condition to entering into this Agreement and ForeScout's commitment to providing ActiveCare, ForeScout may use such information to generate aggregate data so long as the source or content of the communications are not disclosed.

**7.3.** If Customer moves or re-locates Hardware to a location in a country that is different from the country of its previous or original location, Customer must promptly notify ForeScout in writing. Customer acknowledges and agrees that failure to provide the notice may diminish ForeScout's ability to provide ActiveCare under this Agreement, including meeting any timescales specified herein. This Section does not relieve Customer's obligations under Section 15 (*Compliance with Laws*).

## 8. EXCLUSIONS.

ForeScout shall have no obligation to support the Products in the following events: (i) Product(s) is altered or damaged by acts not attributed to ForeScout; (ii) the installation of or use of the Products (or any portion thereof) with other hardware or software not provided by ForeScout; (iii) the Software is not supported in accordance with Section 6 (*Support of Previous Software Versions*) of the Agreement; (iv) any errors caused by Customer's negligence, abuse, misapplication, or use contrary to the written instructions specified by ForeScout or as expressly specified in the applicable Product documentation; (v) any errors caused by circumstances that are beyond ForeScout's control; (vi) any issues related to unauthorized access or any security breach to Customer's network; (vii) the Hardware is no longer supported by ForeScout in accordance with ForeScout's then-current end of life policy; (viii) Customer is not current on its ActiveCare payments; (ix) Customer has exceeded the applicable Device Count; (x) Customer's failure to implement all updates to the Software made available under this Agreement; (xi) any error that is not reproducible by ForeScout; or (xii) any issues with the Products caused by a third party service provider. In addition, ForeScout shall have no obligation to support any third party software or hardware, whether or not such third party software or hardware is provided by ForeScout.

## 9. OWNERSHIP AND USE.

All Software updates and other changes, improvements, Fixes or other modifications to the Software provided under this Agreement shall be deemed included in the Software and shall be subject to the terms and conditions of ForeScout's standard end user license agreement ("EULA") available at [www.forescout.com/eula](http://www.forescout.com/eula).

## 10. WARRANTIES; DISCLAIMER.



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

**10.2.** THESE TERMS AND CONDITIONS DEFINE A SERVICE ARRANGEMENT AND NOT A PRODUCT WARRANTY. ALL SOFTWARE AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE FORESCOUT'S STANDARD END USER LICENSE AGREEMENT. THESE TERMS AND CONDITIONS DO NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT.

**10.3.** EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 10.1, THERE ARE NO WARRANTIES WITH RESPECT TO THE SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.

**10.4.** IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

## **11. CONFIDENTIAL INFORMATION.**

**11.1. 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. The restrictions on disclosure set forth in this Section shall not apply to Confidential Information which: (i) becomes publicly known without breach of this Agreement; or (ii) the Recipient can show by written records was rightfully in its possession prior to the disclosure by the Discloser or becomes rightfully known to the Recipient without confidential or proprietary restriction from a source other than the Discloser; (iii) is approved for disclosure without the restriction in a written document which is signed by a duly authorized officer of the Discloser, or (iv) is independently developed by the Recipient prior to disclosure without reference to the Discloser's Confidential Information. ForeScout recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

**11.2. 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 in order to exercise Recipient's rights and obligations under 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, law, including, but not limited to the Freedom of Information Act, 5 U.S.C. § 552, 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.

## **12. INDEMNITY.**

**12.1.** To the extent permitted by law, ForeScout shall indemnify, defend (to the extent permitted by 28 U.S.C. § 516), and hold the 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 which is based on the grossly negligent acts or willful misconduct of its employees or agents, that directly causes damage or bodily injury to persons or property, real or tangible, and such damage or bodily injury directly arises out of performance of this Agreement ("Claim").

**12.2. Procedures.** 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.

**12.3. Exceptions.** Notwithstanding the foregoing, ForeScout will have no obligation to Customer under this Section 12 to the extent that any such Claim arises or results from (i) the unauthorized or improper use by Customer of the ActiveCare services or any deliverables thereof provided by ForeScout under this Agreement; (ii) the combination of the ActiveCare services or any deliverables thereof 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 ActiveCare services or any deliverables thereof 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 Services or deliverables provided to Customer by ForeScout and which performs in a substantially similar fashion as the ActiveCare services or deliverables at issue.

## **13. LIMITATION OF LIABILITY.**





**13.1.** EXCEPT FOR BREACHES OF SECTION 11 (*CONFIDENTIALITY*), NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2.** EXCEPT FOR BREACHES OF SECTION 11 (*CONFIDENTIALITY*), IN NO EVENT SHALL FORESCOUT'S LIABILITY FOR ANY REASON AND FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE CUMULATIVE AMOUNTS PAID OR PAYABLE BY CUSTOMER FOR ACTIVECARE SERVICES IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

**13.3.** THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES SET FORTH IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). TO THE EXTENT ALLOWED UNDER LOCAL LAW, FORESCOUT AND CUSTOMER AGREE THAT THIS SECTION FAIRLY ALLOCATES THE RISKS IN THIS AGREEMENT BETWEEN THE PARTIES.

**13.4.** THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733.

#### **14. NON-SOLICITATION.**

During this Agreement, and for a period of one (1) year immediately following the termination or expiration of this Agreement, Customer agrees not to solicit or induce any employee or independent contractor of ForeScout involved in the performance of this Agreement to terminate or breach an employment, contractual or other relationship with ForeScout.

#### **15. COMPLIANCE WITH LAWS.**

**15.1. 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.

**15.2. 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 as, "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.

#### **16. GENERAL.**

**16.1. 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.

**16.2. Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**16.3. 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.

**16.4. 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](mailto:generalcounsel@forescout.com) or to 190 West Tasman Drive, San Jose, CA 95134, USA; Attention: General Counsel.

**16.5. 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.

**16.6. 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.

**16.7. 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.

**16.8. 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.

**16.9. 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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**EXHIBIT A**  
**TECHNICAL SUPPORT AND ESCALATION PROCESS**

***HOW TO OPEN A WITH FORESCOUT SUPPORT TICKET***

ForeScout Support can be contacted through the following methods:

- Via phone: (001) 866-377-8773 or (001) 708-237-6591
- Via email: [Support@ForeScout.com](mailto:Support@ForeScout.com)
- Via Support Portal: <https://support.forescout.com/>

***SEVERITY LEVELS***

Errors are categorized by severity in accordance with the following:

<b>SEVERITY</b>	<b>DEFINITION</b>
<b>Sev 1</b>	<b>Product functionality severely impacted.</b> One or more production CounterACT® appliances are in a down state. Products are completely inaccessible and preventing Customer from performing critical business functions.
<b>Sev 2</b>	<b>Product functionality is impacted.</b> Major functionality in the Product(s) is experiencing a problem, negatively impacting significant aspects of the Customer’s business. Customer project deadlines are severely impacted.
<b>Sev 3</b>	<b>Product functionality is impeded, but functioning.</b> An important function, in the Product(s), is experiencing an intermittent problem or a non-essential operation is failing consistently, however most Product functionality remains operable.
<b>Sev 4</b>	<b>Product functionality is not affected, but symptoms exist.</b> Nominal impact request. This includes assistance with configurations, feature requests, and other non-critical questions.

***SEVERITY LEVELS RESPONSE TIMES***

Initial response time measured by the severity levels above and from when Customer contacts ForeScout Support in accordance with the following:

<b>SEVERITY</b>	<b>Time to Respond</b>
<b>Sev 1</b>	1 Hour
<b>Sev 2</b>	3 Hours
<b>Sev 3</b>	8 Hours
<b>Sev 4</b>	Next business day

***UPDATES AND COMMUNICATION WITH FORESCOUT***

- Once a ticket is entered for an Error, the Technical Support Engineer will update Customer as needed, per severity level, or as agreed until the ticket is closed.
- When a WebEx or equivalent troubleshooting session is held between ForeScout and Customer, verbal communication is supplemented by a ”chat box” where the dialog that is taking place is typed by the speaking party into the chat box. This is required to minimize any verbal language barriers.
- Once a ticket is entered for an Error, a severity level is assigned by the TSE in consultation with Customer. If Customer and the TSE cannot agree on the severity level, then Customer may immediately escalate the issue to ForeScout Support management and, if necessary, to the VP of Global Services and Support.

***FORESCOUT SUPPORT MANAGEMENT VISIBILITY***



- All Severity 1 Errors are reported to the Manager of Customer Support, Director of Support, and the VP Global Services and Support.
- All Severity 2 Errors and other Errors that are not meeting response time frames are reported to the Manager of Customer Support.
- Any issue that is escalated to Sustaining Engineering is reported to the Manager of Customer Support, Director of Support, VP Global Services and Support, and VP R&D.

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#### ***DEFECT FIXES AND FEATURE REQUESTS***

- ForeScout will make commercially reasonable efforts to resolve Errors in accordance with this **Exhibit A**. Customer acknowledges that the timeline for a Fix depends on the Severity level, Error complexity, availability of a Workaround, and availability of the information and systems necessary to analyze and determine root cause of the Error.
- Feature requests can be submitted to ForeScout Support or the ForeScout Sales Team, and ForeScout may evaluate such requests according to ForeScout's then business needs.

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