



**FORESCOUT TECHNOLOGIES, INC.
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services 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 Professional Services, and **ForeScout Technologies, Inc.** (“ForeScout”). When Professional Services are purchased by Customer, the following terms and conditions apply. If Customer purchases such Professional Services for its Affiliate(s) to use in connection with the ForeScout products, Customer will ensure that such Affiliate complies with the terms and conditions of this Agreement. Customer’s standard terms and conditions of sale, 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 Professional Services 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.

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

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

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

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

“Resident Engineer” means a ForeScout resource who provides in-depth technical knowledge to manage, monitor, and administer Customer’s CounterACT enterprise deployment. A more detailed description is available on ForeScout’s then-current Resident Engineer Datasheet.

“Service Account Manager” means a ForeScout resource who is responsible for developing, cultivating and managing Customer’s ForeScout experience. A more detailed description is available on ForeScout’s then-current Service Account Manager Datasheet.

2. PROFESSIONAL SERVICES.

If purchased by Customer, ForeScout will provide Customer certain implementation, configuration, consulting, or training services (the “Professional Services”) as more fully as described on a Statement of Work, referencing this Agreement (“SOW”), or on a ForeScout datasheet (“Datasheet”), as the case may be.

3. FEES AND EXPENSES.

3.1. Customer will purchase Professional Services 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. Services provided by a Resident Engineer or Service Account Manager are considered Professional Services for purposes of this Agreement.

4. CONFIDENTIALITY.

4.1. 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.

4.2. 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, 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.

5. INTELLECTUAL PROPERTY OWNERSHIP.

5.1. Customer Material. Customer shall retain all rights, title and any and all Customer products, data, plans, specifications, reports, designs, network architecture, documentation and other similar information, or any derivatives thereof, developed, used or disclosed by Customer in its receipt of Professional Services under this Agreement and any applicable SOW (collectively "Customer Materials"). Except as explicitly set forth herein, no rights, title and interest in any Customer Materials are transferred to ForeScout.

5.2. ForeScout Material. ForeScout shall retain all rights, title and interest in all Products data, plans, processes, methods, specifications, reports, designs, templates, scripts, code, technological "know how", technology, documentation and other similar information, and any derivatives thereof, developed, used or disclosed by ForeScout (or a third party service provider acting on ForeScout's behalf) in the provision of Professional Services under this Agreement and any applicable SOW (collectively "ForeScout Materials"), provided Customer has use of said derivatives at no additional charge pursuant to Section 5.3 (*Work Product*). Except as explicitly set forth herein, no rights, title or interest in any ForeScout Materials are transferred to Customer under this Agreement.

5.3. Work Product. To the extent ForeScout Materials are incorporated into the Professional Services or deliverables provided under this Agreement (collectively, "Work Product"), such Work Product is provided to Customer in a non-transferable, non-exclusive, world-wide and royalty free license to use the Work Product solely for Customer's internal business purposes upon payment in full of all fees and expenses due to ForeScout for the applicable Professional Services and deliverables and subject to the Product license use restrictions, provided that (i) Customer may modify and enhance deliverables consisting of scripts and code solely for its own internal business purposes, and (ii) Customer will own the portion of the deliverables delivered to Customer in tangible form consisting of written reports, analyses, architecture diagrams, projects plans and similar working documents. Customer agrees not to reverse engineer any software included in the Work Product.

5.4. Reservation of Rights. Each party reserves all intellectual property rights not expressly granted to the other party under this Agreement. Customer acknowledges and agrees that, subject to its confidentiality obligations in Section 4 (*Confidentiality*), ForeScout is not restricted from developing, implementing, marketing or selling services or deliverables for other customers or projects that are similar to the Professional Services or deliverables provided under this Agreement.

6. WARRANTIES.

6.1. ForeScout Warranties. ForeScout represents and warrants that the Professional Services provided hereunder shall be provided in a professional and workmanlike manner. In the event of a breach of this warranty, ForeScout shall re-perform the applicable Professional Services within a reasonable time provided that Customer notifies ForeScout in writing within thirty (30) days following the date of completion of the Professional Services. The foregoing shall be Customer's sole and exclusive remedy, and ForeScout's sole and exclusive obligation, for a breach of the warranty set forth in this Section 6.1 (*ForeScout Warranties*).

6.2. Warranty Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 6.1 (*ForeScout Warranties*), THERE ARE NO OTHER WARRANTIES WITH RESPECT TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. 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.

7. INDEMNITY.

7.1. General Indemnification. 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.

7.2. IP Indemnity. ForeScout shall indemnify, defend to the extent permitted by 28 U.S.C. § 516 and hold the other party harmless from the associated costs and fees (including reasonable attorneys' fees and expenses) finally awarded by a court of competent jurisdiction or agreed to in settlement or compromise, to the extent that such fees and costs arise from a third party claim, proceeding or suit alleging that the Professional Services, or portion thereof, infringes any patent, copyright or trade secret that is protected under the applicable jurisdiction in which the Professional Services are performed.

7.3. Procedure. The third party claims described in Section 7.1 and 7.2 shall be each referred to as a "Claim." ForeScout's obligations hereunder shall be conditioned on Customer promptly notifying ForeScout of any such Claim and permitting ForeScout 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.

7.4. Exceptions. Notwithstanding the foregoing, ForeScout will have no obligation to Customer under this Section 7 (*Indemnity*) to the extent that any such Claim arises or results from (i) the unauthorized or improper use by Customer of the Professional Services or any deliverables thereof provided by ForeScout under this Agreement; (ii) the combination of the Professional 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 Professional 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 Professional Services or deliverables provided to Customer by ForeScout and which performs in a substantially similar fashion as the Professional Services or deliverables at issue.

7.5. IP Remedies. Should the Professional Services provided under this Agreement become, or in ForeScout's reasonable opinion be likely to become, the subject of an infringement claim, ForeScout may, at its sole discretion and expense, either: (i) procure for Customer the right to exercise its rights under this Agreement; or (ii) re-perform the Professional Services so that they are non-infringing, provided that Customer receives the material benefits Customer had expected from the Professional Services.

7.6. Entire Obligation. This Section 7 (*Indemnity*) states the entire liability of ForeScout and Customer's exclusive remedy with respect to any Claim.

8. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date and shall continue in full force and effect thereafter unless and until terminated in accordance with the provisions of this Agreement or until completion of the Professional Services provided for herein and in the SOWs. 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 for all Professional Services performed, 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 4 (*Confidentiality*), 5 (*Rights to Work Product*), 6.2 (*Warranty Disclaimer*), 7 (*Indemnity*) 8 (*Term and Termination*), 9 (*Limitation of Liability*), 10 (*Non-Solicitation*), 11 (*Compliance with Laws*), and 12 (*General*) shall survive termination or expiration of this Agreement for any reason.

9. LIMITATION OF LIABILITY.

9.1. EXCEPT FOR FORESCOUT'S INDEMNITY OBLIGATIONS UNDER SECTION 7.2 (*IP INDEMNITY*) AND BREACHES OF SECTION 4 (*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.

9.2. EXCEPT FOR FORESCOUT'S INDEMNITY OBLIGATIONS UNDER SECTION 7.2 (*IP INDEMNITY*) AND BREACHES OF SECTION 4 (*CONFIDENTIALITY*), IN NO EVENT SHALL FORESCOUT'S LIABILITY FOR ANY REASON AND FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE AMOUNTS PAID OR PAYABLE TO FORESCOUT BY CUSTOMER UNDER THE SOW GIVING RISE TO SUCH CAUSE OF ACTION. 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 THIS SECTION FAIRLY ALLOCATES THE RISKS IN THIS AGREEMENT BETWEEN THE PARTIES.

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

10. 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; provided that solicitations and subsequent hirings initiated through general newspaper or website advertisements and other general circulation materials not directly targeted at such individuals shall not be deemed solicitations in violation of this sentence.

11. COMPLIANCE WITH LAWS.

11.1. General. Each party will comply fully with all international and national laws and regulations that apply to the Products and to Customer's use thereof.

11.2. Export Controls. Customer represents that it is not a Restricted Person, which shall be deemed to include any person or entity: (i) located in or a national of 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>); (iii) 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.

12. GENERAL.

12.1. 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. ForeScout may subcontract the Professional Services, provided that ForeScout remains responsible for performance of all terms and conditions of this Agreement.

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

12.3. 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.

12.4. 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.

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. 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.

12.8. Entire Agreement. This Agreement and any applicable SOW constitute 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. In addition, any SOW may only be amended by a written document signed by each party’s authorized representative and pursuant to any change control procedures set forth in the SOW. In the event of a conflict between this Agreement and a particular SOW, the terms of the SOW shall control with respect to the Professional Services provided pursuant to such SOW. In the event any one or more of the provisions of this Agreement or of any SOW is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired. 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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