

All references to Pulse Secure in these Terms and Conditions should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Pulse Secure.”

TERMS AND CONDITIONS FOR PULSE SECURE PRODUCTS AND SERVICES

Capitalized terms used in this Agreement are defined in Section 28 (Definitions).

1. License Grant.

- a. When You purchase or rightfully receive a license to a Software product, Pulse Secure grants You a worldwide, non-exclusive, non-transferrable right to install and use that Software for the term stated in Your Proof of Entitlement and the applicable ordering document.
- b. As long as Your use of the Software does not exceed the quantity of License Metric units that You purchased,
- c. You may copy, install and use the Software on any device that supports it (and You may move the Software from one device to another), EXCEPT for operating system software (and any separately licensable Software products that may be included along with the operating system software in the object code image You receive from Pulse Secure) and its Updates, all of which may only be installed and used on another Pulse Secure Platform that You have purchased or leased from Pulse Secure or an Approved Source for Your own use and not for resale.

2. Trust Based Licensing Model

Most Software offered by Pulse Secure employs no programmatic license enforcement. It is Your responsibility to both monitor Your usage level, and purchase sufficient License Metric units to meet Your Software usage.

3. License Name

Each Software product is identified by unique name. This name, when combined with a Version number corresponds to a specific base set of product features and functionality identified to that Version of the Software in Pulse Secure's Feature Documentation.

4. Reserved.

5. License Metrics

License Metrics include the following:

- a. **Core** - the number of Cores available for any instance of Software to operate on, where "Core" means an individual processing unit that is embedded in a computer processor. A processor may contain multiple Cores. If one or more instances of Software are installed for use on a virtual machine, then the number of Cores assigned to the virtual machine will be counted as available for such instance(s) of Software.
- b. **CPU Socket** - the number of CPU Sockets available for any instance of Software to operate on, where "CPU Socket" means a mechanical component that provides electrical connectivity between a microprocessor and a printed circuit board. If one or more instances of Software is installed for use on a virtual machine, then the number of CPU Sockets assigned to the virtual machine will be counted as available for such instance(s) of Software.
- c. **Events per Second** - the maximum rate of Events per second that the Software, as deployed, is capable of detecting, logging, recording, monitoring, analyzing or otherwise acting upon or processing. For purposes of this metric, "Event" means a condition or state in the network, including a condition or state in a data path in the network, in an element of the network or in a device connected to the network. If

multiple instances of the Software are used, then total Events per Second is the sum of the maximum rates across all such instances.

- d. **Flows per Second** - the maximum rate of sequences of packets per second from a source device to a destination that the Software, as deployed, is capable of detecting, logging, recording, monitoring, analyzing or otherwise acting upon or processing. If multiple instances of the Software are used, then total Flows per Second is the sum of the maximum rates across all such instances.
- e. **Managed Users** - the number of individuals to which You and Your direct customers grant access for one or more services furnished, managed, or provisioned by any instance of the Software. A Managed User who accesses such services through multiple devices is nonetheless counted as a single Managed User.
- f. **Network Element** - the number of physical or virtual devices that are recognizable by any instance of the Software as devices that it may administer, monitor, manage, provision, or otherwise act upon.
- g. **100Mbps** - the maximum rate of total bits of throughput (inbound or outbound) per second (measured in 100Mbps per second units) that the Software, as deployed, is capable of detecting, monitoring, or otherwise acting upon or processing. If multiple instances of the Software are used, then total 100Mbps is the sum of the maximum rates across all such instances.
- h. **Gbps** - the maximum rate of total bits of throughput (inbound or outbound) per second (measured in Gbps per second units) that the Software, as deployed, is capable of detecting, monitoring, or otherwise acting upon or processing. If multiple instances of the Software are used, then total Gbps is the sum of the maximum rates across all such instances.
- i. **Other Forms of License.** Other License Metrics may be defined for specific Software products in a "Software-Specific Entitlement Addendum" ("SSEA").

6. Special Purpose Licenses

Special Purpose Licenses may not be used for any production or commercial application. License Metric limitations do not apply to Special Purpose Licenses.

- a. Reserved.
- b. Research and Development Use-based License. If Your Proof of Entitlement and applicable ordering document for certain Software (or a separate written agreement with Pulse Secure) identifies Your license as "Research and Development Use" or "Lab Use" or with words of like meaning, then for the license term You may install and use the Software but only for internal research and development.
- c. Evaluation Use-based License. If Your Proof of Entitlement and applicable ordering document for certain Software identifies Your license as "Evaluation Use" or with words of like meaning, then for the license term You may install and use the Software but only for internal evaluation of the Software.
- d. Education Use-based License. If Your Proof of Entitlement and applicable ordering document for certain Software identifies Your license as "Educational Use," "Training Use" or with words of like meaning, then for the license term You may install and use the Software solely as a training tool in a Pulse Secure authorized class that You conduct in the use of that Software. You may so use the Software only while You are operating under a valid and active Global Academic Alliance agreement or Authorized Education Partner agreement with Pulse Secure. You may not, however, allow anyone to access the software other than the instructor and the students duly enrolled in the class, and You may not allow students to copy or download or remove any copy of Software or to use the Software other than for conduct of coursework.

7. Maintenance Services; Updates.

- a. General. Pulse Secure makes available the maintenance services (the "***Maintenance Services***") described in the ***ApplicableSDD*** (Service Description Document) at <http://www.pulsesecure.net/support>, for informational purposes only. All Maintenance Services are subject to the terms and conditions of these terms and conditions and the applicable ordering document.
- b. Subscriptions. If Your Software is licensed under a Subscription, then during the term of the Subscription, Pulse Secure shall provide Maintenance Services for that Software at no additional charge.
- c. Special Purpose Licenses. Pulse Secure has no obligation to furnish Maintenance Services of any kind for Software licensed under Special Purpose License.
- d. Maintenance Contracts for Licenses other than Subscriptions.
 - i) If Your license is not a Subscription or a Special Purpose License, then Maintenance Services are available only if You purchase them on an applicable ordering document.
 - ii) If Your license is not a Subscription or a Special Purpose License, support is only available through an applicable ordering document if the following requirements are met:
 - A. The contract must be for at least the initial twelve (12) months of Your license.
 - B. The contract must cover all of Your License Metric Units of the Software;
 - C. The contract must provide at least for the Maintenance Services as described in the Applicable SDD or their substantial equivalent; AND
 - D. The contract must either be purchased from Pulse Secure or its Approved Sources.
- e. Updates. Updates are available to You only as a part of Maintenance Services. By downloading or taking delivery of any Update, Your rights with respect to the Update are subject to the terms of this Agreement and Your Proof of Entitlement for the Software and applicable ordering document. Your rights to use the Update are also subject to Your ceasing all use of the replaced Software (or, as the case may be, the replaced portion of the Software in the case and Update is provided in form of a patch).

8. Certain License Restrictions, Limitations and Prohibitions

This Section 8 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Special Purpose Licenses, Subscriptions, Perpetual or otherwise:

- a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.
- b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.
- c. No Sublicensing or Assignment. You may not sublicense, transfer or assign, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement or applicable ordering document. Any attempted sublicense, transfer or assignment shall be void. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization (collectively, a "Restructure") where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.
- d. You are Sole Licensee. No rights or licenses in the Software or any Maintenance Services shall arise under this Agreement in favor of anyone other than You.
- e. Separately Licensable Software. The software image that contains Software product that You license from Pulse Secure or its Approved Sources might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license on a applicable ordering

document. Features and functionality are not included in Your license to the Version of the Software product You licensed unless a published Pulse Secure feature description for that Version of the Software identifies those features and functionality as being included.

- f. Restrictions on charging a fee for access or use. You shall not allow any customer or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software.
- g. Other Use Restrictions and Prohibitions. You shall **not**, directly or indirectly:
- Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver.
 - Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Pulse Secure.
 - Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image You have received even if that any such library, file, module or other component is separately licensable, or use any such modules, files or other components separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);
 - Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing its contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to Pulse Secure for compliance with all provisions of this Agreement;
 - Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files notices, disclaimers, marks and labels included in the Software as delivered by Pulse Secure; or
 - Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity.

9. Inspection/Acceptance.

The Contractor (EC America, Inc.) can only, and shall only tender for acceptance those items that substantially conform to the software manufacturer's ("PULSE SECURE") published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Government reserves the right to inspect or test any supplies or services that have been delivered. The Government may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights- (1) Within the warranty period; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

10. Reserved.

11. Recordkeeping.

- a. Your Duty to Monitor Use. You agree to monitor Your use of all Software and generate accurate, complete and auditable records of levels of that use.
- b. Reports of Excess Use; Purchase of Additional License Metric Units. If at any time Your maximum level of use of the Software exceeds the number of License Metric units You have purchased, then on or before ten days after the last day of the calendar quarter in which Your level of use first exceeded that limit, You shall (i) notify Pulse Secure in writing of Your maximum level of use and (ii) take the necessary steps to true-up Your License Metric units. c. Reserved.

12. Reserved.

13. Your Data.

Unless Pulse Secure otherwise agrees in a signed writing, You shall not disclose or provide Pulse Secure access to any personally-identifiable information, whether in data or any other form. You shall be solely responsible for all consequences of any such disclosure or grant of access.

14. Ownership.

Pulse Secure and Pulse Secure's licensors, respectively, retain exclusive ownership of all right, title, and interest of all intellectual property in and to the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.

15. Limited Warranty.

- a. SOFTWARE LICENSED FOR RESEARCH AND DEVELOPMENT USE, EVALUATION USE, DEMONSTRATION USE OR EDUCATIONAL USE ARE FURNISHED "AS IS" WITH ALL FAULTS

AND WITHOUT WARRANTY OF ANY KIND, EXPRESSLY OR IMPLIED. For any other license of Software under this Agreement, Pulse Secure warrants for Your sole benefit that for a period of ninety (90) days from the commencement of the license term (herein, the "*Warranty Period*"), the media on which Software is delivered, shall be free from defects in material and workmanship under normal authorized use consistent with the product instructions. You may not make a warranty claim after lapse of the Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF PULSE SECURE FOR BREACH OF ANY WARRANTY UNDER THIS SECTION 15 SHALL BE THE REPLACEMENT OF THE MEDIA CONTAINING THE SOFTWARE.

- b. Restrictions: No warranty will apply if the Software (or the hardware on which the Software operates) (i) has been altered, except by Pulse Secure; (ii) has not been installed, operated, repaired, or maintained in accordance with documentation and instructions supplied by Pulse Secure; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed solely for Research and Development Use, Lab Use, Evaluation Use or Demonstration Use or if the Software is beta software or otherwise not commercially released. In addition, neither the Software nor any Pulse Secure hardware system on which it may be installed is designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product, and Pulse Secure disclaims any

express or implied warranty of fitness for such uses. You are solely responsible for backing up its programs

and data to protect against loss or corruption. **PULSE SECURE WARRANTY OBLIGATIONS DO NOT INCLUDE INSTALLATION, REINSTALLATION OR MAINTENANCE SERVICES OF ANY KIND.**

c. PULSE SECURE DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK.

d. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 15, TO THE EXTENT PERMITTED BY LAW PULSE SECURE DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

16. Reserved.

17. Compliance with Laws; Export Requirements.

You shall comply with all applicable laws and regulations in connection with its movement and use of the Software and any Maintenance Services. You acknowledge and agree that the Software as well as related technical data and assistance that may be furnished in the course of the Maintenance Services may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that the Software was not furnished to You as a result of an export or re-export or import in violation of US or other applicable laws or regulations, that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country (Cuba, Iran, North Korea, Syria or Sudan), and that You are not using any Software or technology furnished hereunder or in connection with any Maintenance Services to further activities in support of development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify Pulse Secure if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to Pulse Secure of an ultimate destination of the Software, You shall not export, either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government is required. You understand and agree that Pulse Secure may without liability or breach impose certain restrictions and conditions on Maintenance Services in order to protect against violation of export control laws.

18. Commercial Computer Software.

The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and the Proof of Entitlement.

19. Reserved.

20. Reserved.

21. Reserved.

22. Reserved.

23. Reserved.

24. Reserved.

25. Reserved.

26. Reserved.

27. Reserved.

28. Definitions.

The following definitions apply to capitalized terms used this Agreement:

- "**Agreement**" means this End User License Agreement ("EULA").
- "**Applicable SDD**" is as defined in subsection 7.a, above.
- "**Approved Source**" is Pulse Secure or a distributor or reseller authorized by Pulse Secure to distribute Software and Maintenance Services in the territory in which You are located.
- "**Confidential Information**" is as defined in Section 13, above.
- "**Customer**" or "**You**" means the individual, other legal entity, or other business, governmental or not-for profit organization (but excluding any parent, subsidiary or other affiliate of any of the foregoing) that (A) is the original end user purchaser of a license to the Software from an Approved Source, (B) accepts the terms of this Agreement, (C) is identified as "**Customer**" or "**End User**" in the applicable Proof of Entitlement, if any, and (D) has registered by name with Pulse Secure as end user of the Software.
- "**EOL/EOS Policies**" are as defined under <https://www.pulsesecure.net/support>.
- "**Feature Documentation**" for a particular Software Version or Release means Pulse Secure's published User Guide, Release Notes and feature listings for that Version or Release.
- "**Pulse Secure**" means Pulse Secure, LLC.
- "**Pulse Secure Platform**" means any hardware router, switch or other network hardware equipment or devices marketed and sold by Pulse Secure.
- "**License Metric**" is a metric defined in Section 5 or, for some Software, in an SSEA.
- "**Maintenance Services**" for Software means the set of software maintenance services described in the Applicable SDD.
- "**Proof of Entitlement**" is a Pulse Secure order confirmation or other Pulse Secure-issued written or electronic confirmation of Pulse Secure's grant to You of a license. The Proof of Entitlement must identify You, the Software licensed, any applicable License Metric and, if applicable, the number of units of that License Metric that You purchased. The Proof of Entitlement must also indicate whether the license is a Subscription, the term of the license and, if it is a Special Purpose License, the kind of Special Purpose License. If Your license is to operating system software (as well as any separately licensable Software products that may be included along with the operating system software in the object code image You

receive from Pulse Secure) and its Updates, proof of Your purchase of the Pulse Secure Platform on which the operating system software runs shall serve as Your Proof of Entitlement but only as long as You own or lease the Pulse Secure Platform.

- A "**Release**" is a particular object code image of a software product that is identified by a Release denomination starting with "x.y" followed by additional image identifying string. Commonly a Release denomination ends with "Rz" where "z" is one, two or more whole numbers each separated by a period. For example, Pulse Connect Secure 8.1R1 is a Release of the Pulse Connect Secure offering.
- "**Software**" means the software product identified in Your Proof of Entitlement, and includes 1) machine readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription or contract for Maintenance Services.
- "**Special Purpose License**" means any of the licenses described in Section 6 of the Agreement. - "**SSEA**" means a Software-Specific Entitlement Addendum to this Agreement that may include nonstandard terms and conditions covering only a specified Software product or product group.
- "**Subscription**" means a license to Software for a finite, fixed term of use that includes Your right to receive throughout the term of the Subscription and at no additional charge, support services under the terms of the Applicable SDD.
- "**Update**" means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that Pulse Secure makes generally available free of incremental charge to customers purchasing a Subscription or contract for Maintenance Services. An Update may be a Release under a different Version of the Software from that You originally licensed and, therefore, may have a different set of features and functionality.
- "**Version**" means one or more Releases of a particular software product with a common "x.y" denomination in the first two places of the Release identifier. For example, Pulse Policy Secure 5.0R1 through Pulse Policy Secure 5.0R5 are all Releases under the same Version, whereas Pulse Policy Secure 5.0R1 and Pulse Policy Secure 5.1R1 are Releases under different Versions.