

Network Access Control | ForeScout

1. Definitions

In this section:

- (a) **ActiveCare** means ForeScout's support and maintenance offerings;
- (b) **ActiveCare Term** means the duration of the initial ActiveCare term (as specified in the ActiveCare Certificate provided by ForeScout) and any renewal of the ActiveCare terms or the applicable ActiveCare services;
- (c) **Control Feature(s)** means additional control functionality for Product(s) currently subject to a See Feature License, including, but not limited to, host and network based controls for restricting network access, remediating Endpoint deficiencies, automating workflows, or mitigating security risks and threats. A list of Control Features included in a Control Feature License is set out at: www.ForeScout.com/centralisedlicensing. A See Feature License for a Product must be purchased prior to, or simultaneously with, a Control Feature License;
- (d) **Deployment Right(s)** means the receipt of one (1) master copy of the Software and the right to deploy instances of the Software, whether via copy, download or otherwise subject the Endpoint Count restriction;
- (e) **Documentation** means the technical documentation and specifications applicable to any to any given Product, excluding marketing collateral, such as datasheets and solution briefs;
- (f) **Endpoint Count** is the maximum number of Endpoints monitored by the Products and licensed to the Customer, 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;
- (g) **Endpoints** include (but are not limited to) user endpoints (e.g., laptops, tablets and smartphones) network infrastructure devices (e.g., switches, routers and access points), non-user devices and virtual machines;
- (h) **EULA** means the End User License Agreement for Cenitex Products and Professional Services between Cenitex and ForeScout, dated on or around 1 April 2019;
- (i) **Graphical User Interface** (or **GUI**) means the software program which provides the interface for the Customer to operate the Products;
- (j) **Hardware** means the hardware appliance on which the Software is installed;

- (k) **Material Capacity Breach** means exceeding the permitted Endpoint Count by more than 5% on average in any consecutive thirty (30) day period during the term of the EULA;
- (l) **Order** means the applicable ordering document, issued by Cenitex to the Customer, that describes in greater detail the Customer's order-specific information, including quantity, charges, billing information, pricing, payment, shipping information and the Products, Professional Services and ActiveCare services ordered;
- (m) **Product** means the Hardware and the Software that ForeScout has agreed to provide, as indicated in the applicable Order;
- (n) **Professional Services** means the ForeScout implementation, configuration, consultation or training services to be provided to the Customer under any applicable SOW;
- (o) **See Feature(s)** means the core functionality of the Products, including without limitation, visibility, profiling, classification and assessment of the Endpoints accessing the Customer's networks. A more detailed list of functionality included in a See Feature License is set out at <https://www.forescout.com/centralizedlicensing/>; and
- (p) **Software** means the proprietary software programs developed by ForeScout in object code form, as well as any modifications, error corrections, bug fixes or other updates. 'Software' also includes the proprietary GUI, modules and associated Documentation developed by ForeScout.

2. Licence

Product License

- (a) The Customer acknowledges that, subject to the Customer's compliance with these special terms, ForeScout grants the Customer a perpetual, non-exclusive, limited licence to the Products solely:
 - (1) for the Customer's internal business operations; and
 - (2) to support the Endpoint Count and the license functionality specified in the applicable Order.
- (b) Subject to the Customer's cumulative Endpoint Count restrictions, and any Deployment Right associated with such licence, the Customer may only:
 - (1) use one (1) copy of the Software as installed on the Hardware; and

- (2) download electronically a reasonable number of many copies of the GUI and the Documentation as necessary to support the Customer's use of the Products.
- (c) The Customer acknowledges that it is allowed to make a reasonable number of copies of the Software for backup purposes, provided that ForeScout's proprietary notices are contained in such copies.

See Feature Licenses

- (d) A See Feature License is a minimum requirement for accessing ForeScout Products and Professional Services. If the Customer purchases Products with a licence limited to See Features, as set out in an Order, the Customer acknowledges and agrees that:
 - (1) any licences, permission or other use rights to Products provided to the Customer shall be limited to See Features as it relates to Endpoints accessing the Customer's networks (the "**See Feature License**"); and
 - (2) the See Feature License excludes the Customer's right to use or implement any Control Features, and a violation of this subclause (d) will be a breach of Cenitex's agreement with ForeScout and may result in the termination of the Products and Professional Services.

Control Feature Licenses

- (e) If the Customer purchases a licence with enhanced Control Features for Product(s) ("**Control Feature License**") subject to an existing See Feature License, the Customer must exercise the option for all of the Products it has purchased to date as well as any additional Products it elects to purchase on a go forward basis (i.e., the Customer must not simultaneously hold a See Feature License for certain Products, and a Control Feature License for other Products unless otherwise agreed in writing).

Deployment Rights

- (f) With regard to any licences inclusive of Deployment Rights, the parties acknowledge and agree that they have estimated the number of licencing units that the Customer anticipates deploying throughout its networks during the Initial Term, including, without limitation, the applicable Endpoint Count (the "**Estimated Endpoint Count**").

Work Products

- (g) To the extent that ForeScout Materials are incorporated into the Professional Services or deliverables provided to the Customer (collectively, "**Work Product**"), such Work Product is provided to the Customer in a non-transferable, non-exclusive, world-wide

and royalty-free licences to use the Work Product solely for the Customer's internal business purposes upon payment in full of all fees and expenses for the applicable Professional Services and deliverables and subject to the Product license use restrictions, provided that:

- (1) the Customer may modify and enhance deliverables, consisting of scripts and code solely for its own business purposes;
- (2) the Customer will own the portion of the deliverables delivered to the Customer in tangible form, consisting of written reports, analyses, architecture diagrams, projects plans and similar working documents; and
- (3) the Customer agrees not to reverse engineer any software included in the Work Product.

3. Licence use restrictions

- (a) Access to and use of the Software is for the Customer's internal use only. The 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.
- (b) The Customer must not, and must not permit any third party to:
 - (1) 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 authorised by law);
 - (2) extract the Software from the Hardware;
 - (3) incorporate the Software in whole or in part in any other software or product;
 - (4) modify the Software;
 - (5) develop derivative works of the Software or allow others to do so; or
 - (6) attempt to any of the foregoing,

without the express prior written consent of Cenitex. If the Customer makes any modification to the Software (including any derivative works), ForeScout shall own those such modifications.

- (c) Except as expressly provided in this clause, the Customer must not, and must 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.

- (d) The Customer must not, and must 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.
- (e) The Customer represents and warrants that its use of the Products does not conflict with any agreement or understanding to which the Customer may be bound, including, without limitation, any third party intellectual property rights if the Customer purchases any Products designated for a specific limited use, including, without limitation, high availability, disaster recovery or lab testing (“**Limited Use Products**”). The Customer must only use such Limited Use Products for the limited purpose for which they were purchased, and must not use such Limited Use Products to exceed the Customer’s total authorised Endpoint Count on its network. The Customer acknowledges and agrees that if it uses Limited Use Products in breach of this clause, Cenitex reserves the right to charge applicable fees in accordance with clause 10 of this section.

4. Reallocation of Endpoint licences

The Customer will promptly notify Cenitex if, in connection with any matter with the control of the Customer, it intends to repurpose the Products (including without limitation the Software licences) and any related ActiveCare currently being utilised by the Customer. For the avoidance of doubt, any change required to the repurposing of Products in connection with a machinery of government process is not a ‘matter within the control of the Customer’, however, the Customer shall use reasonable endeavours to provide Cenitex with advance notice of any such requirement.

5. No refunds

No refunds shall be given for unused, or under-utilised, licences or ActiveCare.

6. Intellectual Property claims

- (a) Customer acknowledges and agrees that, should the Software or Professional Services provided to the Customer 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:
 - (1) procure for the Customer the right to exercise its rights in relation to the Software or Professional Services; or
 - (2) replace or modify the Software to make it non-infringing (provided that the same functions are performed by the replaced or modified Software), or, in the case of the Professional Services, re-perform the Professional Services in a manner that

is non-infringing, provided that the Customer receives the material benefits of the Professional Services.

- (b) If ForeScout determines in its reasonable discretion after good faith efforts, and in consultation with the Customer that options under subclause (a) are not practicable, ForeScout may terminate the Customer's licenses to such affected Software or suspend or cancel the Professional Services. Upon notice of termination, the Customer shall return to ForeScout all affected Software, or deliverables provided in connection with the affected Professional Services in the Customer's possession for:
- (1) the affected Software calculated over a 60 month period (as determined from the applicable Order date) on a straight line basis; or
 - (2) the affected Professional Services calculated on a straight line basis over the duration of the Professional Services purchased.

7. Reservation of rights

The Customer acknowledges and agrees that, subject to its confidentiality obligations in the EULA, ForeScout is not restricted from developing, implementing, marketing or selling Products, ActiveCare or Professional Services or deliverables for other customers or projects that are similar to the Products, ActiveCare, Professional Services or deliverables provided to the Customer.

8. Data Protection

Unless necessary to use the Products, ActiveCare or the Professional Services, the Customer agrees to not submit to ForeScout:

- (1) any personally identifiable information, including 'personal information' (as defined in the Privacy and Data Protection Act 2014 (Vic)); or
- (2) any 'health information' (as defined in the *Health Records Act 2001*(Vic)).

9. Publicity

Any and all press releases and other public announcements relating to the existence or terms of the EULA or any related transactions must be approved in writing by Cenitex.

10. Audit and Deployment Report

- (a) If requested by Cenitex, the Customer shall provide written notice to Cenitex indicating the number of Software licenses put into production use and the total Endpoint Count in all of their environments ("**Deployment Report**").

- (b) To the extent that the Customer has exceeded the Endpoint Count (or Estimated Endpoint Count), the Customer will be required to pay the applicable fees for:
 - (1) the number of Endpoints in excess of the Endpoint Count (or Estimated Endpoint Count); and
 - (2) pro-rated fees for ActiveCare for the Endpoints in excess of the Endpoint Count (or Estimated Endpoint Count).
- (c) The Customer acknowledges and agrees that ForeScout shall, based upon its reasonable and good faith belief, have the right to dispute the information contained in any Deployment Report(s) and any Endpoint Count true-up. If a Material Capacity Breach is found or otherwise agreed by Cenitex and ForeScout to have occurred, the Customer shall be required to pay for the unauthorised use, calculated at ForeScout's then current rates.

11. Automatic Renewal

The provision of Products, Software, ActiveCare and Professional Services will renew automatically at the end of the initial term unless the Customer notifies Cenitex at least 60 days prior to the commencement of any renewal term that it does not intend to renew.

12. Termination

- (a) If the EULA is terminated in whole or in part, the Customer must:
 - (1) pay all amounts due and owing before the termination is effective; and
 - (2) provide a final Deployment Report to Cenitex.
- (b) On termination of the EULA, any and all Orders or SOWs executed under that EULA will also cease. If a Deployment Right granted to the Customer is terminated, the Customer shall retain a perpetual license to the Software licenses identified in the Order, provided they have been put into production use, are fully paid up and reported in good faith in a Deployment Report (collectively, the 'Deployed Licenses').

13. ActiveCare Support

The Customer will not be entitled to a refund or credit in the even that it elects to reduce its ActiveCare Service from ActiveCare Advanced to ActiveCare Basic.

Advanced Hardware Replacement

- (a) The Customer will only be provided with Hardware replacement for a Defective Product in advance of the Customer's return of a defective Product if the Customer immediately notifies Cenitex in writing of such defect and request a Return Material Authorization

("RMA"). The Customer will repack the defective Hardware in a ForeScout carton (provided with the advance replacement unit) to protect it from damage while in transit. The RMA number must be clearly displayed on the exterior of the package.

Support Issue Severity Levels

- (b) In the event of a support issue with the Products, the Customer is responsible for providing, on Cenitex's request, sufficient information and data in its possession to allow ForeScout to correct the issue.

Customer responsibilities

- (c) The Customer agrees to:
 - (1) ensure that its environment complies with all applicable ForeScout published system specifications; and
 - (2) provide Cenitex with reasonable access to all necessary information, systems and personnel to resolve support issues.
- (d) During the ActiveCare Term, ForeScout may collect information regarding the Customer's support inquiries and communications. The Customer agrees that ForeScout may use such information to generate aggregate data so long as the source or content of the communications are not disclosed.

Exclusions

- (e) The Customer acknowledges and agrees that ActiveCare support may not be provided by ForeScout in the following circumstances:
 - (1) Product(s) are damaged by acts not attributed to ForeScout;
 - (2) the Customer's installation of or use of the Products (or any portion of the Products) with other hardware or software not provided by ForeScout;
 - (3) the Product is not supported in accordance with ForeScout's End of Life Policy;
 - (4) any errors caused by the Customer's negligence, abuse, misapplication, or use contrary to written instructions specified by ForeScout or as expressly specified in the applicable Documentation;
 - (5) any errors caused by circumstances that are beyond ForeScout's reasonable control;
 - (6) issues related to unauthorised access or any security breach of the Customer's network;

- (7) the Customer has exceeded the applicable Endpoint Count;
- (8) any issue that is not reproducible by ForeScout; or
- (9) any issues with the Products caused by a third party provider.