

## PULSE SECURE PROFESSIONAL SERVICES TERMS AND CONDITIONS

By submitting a valid purchase order for Services (as defined below) to Pulse Secure, LLC (“**Pulse Secure**”), either directly or through an authorized reseller of Pulse Secure, you (“**Customer**”) hereby agree that upon Pulse Secure’s acceptance of said purchase order, the provision of the Services set forth in the applicable SDD will be governed by these Professional Services Terms and Conditions (the “**Terms and Conditions**”).

### 1. Definitions

The following definitions shall apply in these terms and conditions.

- a) “**Confidential Information**” means any information disclosed by one Party (the “**Discloser**”) to the other Party (the “**Recipient**”) pursuant to the applicable SDD and these Terms and Conditions where such information would have been understood by a reasonable person to be confidential based on the nature of the information and the circumstances surrounding its disclosure. Confidential Information shall not include any information that (i) was publicly known or made generally available in the public domain prior to the time disclosure by Discloser; (ii) becomes publicly known or made generally available after disclosure by the Discloser to Recipient through no action or inaction of the Recipient; (iii) Recipient can demonstrate by documentary evidence was already in the possession of Recipient without confidentiality obligations at the time of disclosure by Discloser; (iv) is obtained by the Recipient without confidentiality obligations from a third party without a breach of such third party’s obligations of confidentiality; or (v) Recipient can demonstrate by documentary evidence is independently developed by Recipient without use of or reference to the Discloser’s Confidential Information.
- b) “**SDD**” means a Services Description Document posted at <https://support.pulsesecure.net/service-descriptions> which describes the Professional Services to be provided by Pulse Secure, referencing these Terms and Conditions as governing the provision of such Professional Services.
- c) “**Services**” means the technical support purchased from Pulse Secure to be provided directly by Pulse Secure to you.

### 2. Pulse Secure’s Obligations.

Pulse Secure warrants that it shall perform the Services set forth in the applicable SDD in a workmanlike manner consistent with industry standards. Customer must notify Pulse Secure promptly, but in no event more than thirty (30) days after completion of the Services, of any claimed breach of this warranty. Customer’s sole and exclusive remedy for breach of this warranty shall be, at Pulse Secure’s option, re-performance of the Services or return of the portion of the fees paid to Pulse Secure by Customer for such non-conforming Services. The provision of Services under these Terms and Conditions shall not extend the warranties provided with any Hardware purchased or Software licensed by Customer.

### 3. Confidentiality Obligations.

- a) The Recipient shall not use any Confidential Information of the other Party except as necessary to support the Services and the obligations specified in the SDD and these Terms and Conditions.
- b) Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of Discloser. Without limiting the foregoing, the Recipient shall take at least those measures that it takes to protect its own Confidential Information of a similar nature. The Recipient shall reproduce the Discloser's proprietary rights notices on any copies of Confidential Information, in the same manner in which such notices were set forth in or on the original. Recipient shall promptly notify Discloser of any unauthorized use or disclosure of the Discloser's Confidential Information of which it becomes aware.
- c) Recipient may disclose or grant access to Discloser's Confidential Information only to those of its employees, contractors, consultants or agents that have a need to know such Confidential Information, in each case provided that such employees, contractors, consultants or agents have been notified of the confidential nature of the information and are bound by obligations of confidentiality at least as restrictive as those set forth herein. Recipient remains primarily liable to Discloser for any use or disclosure of Confidential Information in violation of these terms by its affiliates or other parties to which Recipient discloses Discloser's Confidential Information.
- d) The confidentiality obligations herein shall survive the conclusion of the provision of the Services for a period of three (3) years.

### 4. Proprietary Materials; Information Provided by Others.

- a) Subject to the limitations set forth below in this Section 8, Customer hereby grants to Pulse Secure, and Pulse Secure hereby accepts, access to and use of Customer's and/or its third party licensor's proprietary materials (the "**Licensed Materials**") solely for purposes of providing the Services pursuant to the SDD. Customer warrants and represents that it has, or will use commercially reasonable efforts to obtain, the right and authority to grant such access to the use of all Licensed Materials to Pulse Secure hereunder. Pulse Secure shall not make any copies, distribute, reproduce, modify, transmit, reverse engineer, disassemble, decompile, or prepare derivative works, of the Licensed Materials, except as necessary to provide the Services and as approved by Customer.
- b) Pulse Secure agrees not to remove, obscure or obliterate any copyright notice, trademark or other proprietary rights notices placed on or contained in any Licensed Materials.

- c) Pulse Secure will be entitled to rely on the accuracy and completeness of information prepared and/or provided by Customer. Pulse Secure shall not be liable to Customer or any third party for any injury or loss arising from errors, omissions, or inaccuracies in documents or other information that is provided by Customer.

## 5. Limitation of Liability.

**PULSE SECURE'S LIABILITY ARISING OUT OF THESE TERMS AND CONDITIONS AND THE PROVISION OF THE SERVICES SHALL BE LIMITED TO THE AMOUNT PAID AND/OR PAYABLE BY CUSTOMER UNDER THE VALID AND APPROVED PURCHASE ORDER FOR SUCH SERVICES. IN NO EVENT SHALL PULSE SECURE HAVE ANY LIABILITY FOR ANY LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

## 6. Miscellaneous.

- a) Governing Law; Jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law principles. The United Nation's Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Terms and Conditions. The Parties agree that the state and federal courts located in Santa Clara County, California shall have sole and exclusive jurisdiction and venue over any matter arising out of the provision of the Services and each Party hereby submits itself and its property to the venue and jurisdiction of such courts. Each Party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such proceeding in such court, including any claim that such proceeding has been brought in an inappropriate or inconvenient forum. The Parties agree not to demand a trial by jury in any action, proceeding or counterclaim.
- b) Entire Agreement. These Terms and Conditions and the applicable SDD constitute the entire agreement between the Parties regarding the provision of the Services and supersede all previous and/or contemporaneous agreements and understandings, whether oral or written, between the Parties hereto, including but not limited to any preprinted terms on purchase orders, invoices, advertising and sales literature. In the event that any provision of these Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions herein shall remain in full force and effect.
- c) Force Majeure. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement arising out of causes beyond its reasonable

control, including but not limited to strikes, labor or work stoppages, or disputes, riots, wars or other violence, acts of terrorism, acts of civil or military authorities or a public enemy, government action, pandemic, epidemic, or regulation or any law, order, proclamation, regulation, ordinance, demand, act or requirement of any governmental agency, or acts of God, including, but not limited to fires or other casualties or accidents, floods, explosions, severe weather conditions or earthquakes. A Party whose performance is prevented, restricted or materially interfered with shall be excused from performance so long as such Party provides the other Party with prompt written notice describing the condition that prevented, restricted or materially interfered with performance and immediately continues performance whenever and to the extent such causes are removed.

- d) Assignment. Customer may not transfer or assign its licenses, rights or duties under this Agreement without prior written consent from Pulse Secure. Pulse Secure may transfer or assign its rights or duties under this Agreement by change of control, operation of law or otherwise, without the consent of the Customer. Any assignment in violation of the foregoing shall be void. This Agreement shall inure to the benefit of the Parties, their successors and permitted assigns.
- e) Amendment. These Terms and Conditions may be amended or modified only by a writing that is signed by duly authorized representatives of each Party. Notwithstanding the foregoing, Pulse Secure may at any time modify, add, or delete any SDD listed at <https://support.pulsesecure.net/service-descriptions>; provided no such modification shall affect the terms of any Professional Services ordered and accepted prior to the effective date of such modification.
- f) Waiver. No delay or failure of either Party to enforce any provision of these Terms and Conditions will operate as a waiver of the right to enforce that or any other provision herein, nor will any single or partial exercise of any such rights preclude any other or further exercise thereof. To be effective, any waiver must be in writing and signed by the Party providing the waiver.
- g) Relationship of the Parties. In all matters relating to these Terms and Conditions and the provision of the Professional Services, the relationship of the Parties shall be that of independent contractors. Neither Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party. Nothing in this Agreement shall be construed as constituting the Parties as partners or joint venturers, or as creating the relationship of employer and employee, principal and agent, or master and servant.