

PULSE SECURE TRIAL AGREEMENT

IMPORTANT: PLEASE READ THESE TERMS BEFORE ORDERING, INSTALLING, CONFIGURING AND/OR USING THE PULSE SECURE LLC (“PULSE SECURE, US, OR WE”) PRODUCT. THIS DOCUMENT DESCRIBES THE RELATIONSHIP BETWEEN PULSE SECURE AND YOU (EACH PULSE AND YOU, A “PARTY” AND, COLLECTIVELY, THE “PARTIES”). THIS DOCUMENT ALSO MAKES REFERENCE TO ONE OR MORE ADDITIONAL DOCUMENTS WHICH ARE INCORPORATED INTO THIS DOCUMENT BY REFERENCE (“SUPPLEMENTAL TERMS”) (COLLECTIVELY WITH THIS DOCUMENT, THE “AGREEMENT”). THIS AGREEMENT WILL BECOME EFFECTIVE ON THE DATE YOU ACCEPT THE TERMS OF THIS AGREEMENT (THE “EFFECTIVE DATE”). BY INSTALLING, CONFIGURING, AND/OR USING THE PRODUCT IN ANY WAY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY OR INDIVIDUAL IDENTIFIED AS THE CUSTOMER (“YOU” OR “YOUR”) TO THIS AGREEMENT, AND ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY THE TERMS OF AND BECOME A PARTY TO THIS AGREEMENT WITH PULSE SECURE. PULSE SECURE DOES NOT AGREE TO ANY OTHER TERMS, INCLUDING WITHOUT LIMITATION ANY TERMS ON YOUR PURCHASE ORDERS OR INVOICES.

1. DEFINITIONS

In addition to capitalized terms defined elsewhere in this Agreement, the following terms have the following meanings.

“**Admin User**” means any individual who is authorized by Customer to access and use the Service, to whom You (or We at Your request) have supplied access credentials and entitlement to administer Your account within the Service in addition to using all other features of the Service.

“**Authorized User**” means any Admin User or End User.

“**Customer**” or “**You**” means the customer named above and “**Your**” means Customer’s.

“**Customer Data**” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, by Us from Customer or an Authorized User by or through the Service, including Customer assets, policies, practices, and protocols that Customer or its Authorized Users upload or otherwise provide to the Service.

“**Documentation**” means the online documentation regarding the Service, as updated from time to time, accessible to Admin Users via the Service admin console.

“**End User**” means an individual, other than an Admin User, who is authorized by You to access and use the Service, to whom You (or We at Your request) have supplied access credentials, and who has permission to access and use the Service.

“**Our**” means Pulse Secure.

“**Our Materials**” means the Service, Installed Software, Documentation, and information technology infrastructure used by or on behalf of Pulse Secure in providing the Service and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided, developed or used by Us or any Subcontractor in connection with the Service or otherwise comprise or relate to the Service, including any information, data, or other content derived from Pulse Secure’s monitoring of Customer’s or any Authorized User’s access to or use of the Service, but not including Customer Data.

“**Privacy Policy**” means Our Privacy Policy, as updated from time-to-time, located at <https://www.pulsesecure.net/privacy-policy/>.

“**Service**” means the Pulse Zero Trust Access end-to-end network security control and analytics service, as modified from time to time.

“**Trial**” means access to the Service without charge prior to making a decision to purchase a subscription to the Service by placing an order with Us or one of Our authorized resellers.

“**Trial Period**” means the period of time during which Authorized Users are permitted to access and use the Service under this Agreement.

“**Third-Party Materials**” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Service that are not proprietary to Pulse Secure.

2. OUR RESPONSIBILITIES

2.1. Access and Use. During the Trial Period, We will use commercially reasonable efforts to make the Service available to Customer and its Authorized Users. Pulse Secure hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable, worldwide right to access and use, and permit Authorized Users to access and use, the Service solely for Customer’s internal business operations during the Trial Period in accordance with the terms of this Agreement.

2.2. Software License. Pulse Secure hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to install, execute and use mobile or gateway software that We provide or otherwise make available to You or Your Authorized Users in connection with use of the Service as permitted herein (collectively, “**Installed Software**”), in object code only, on devices owned or controlled by Customer or the applicable Authorized User, solely for Customer’s internal business operations during the Trial Period in accordance with the terms of this Agreement.

2.3. Documentation License. Pulse Secure hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, and permit Authorized Users to use, the Documentation solely for Customer’s internal business operations during the Trial Period in accordance with the terms of this Agreement.

2.4. Support. Each Trial includes customer support services (“**Support Services**”) described at

<https://support.pulsesecure.net/services/gold-support/>.

2.5. Subcontractors. We may engage third parties (each, a “Subcontractor”) to perform Our obligations under this Agreement in Our discretion, but We remain responsible for performance of any such Subcontractor.

3. USE OF SERVICE

3.1. Access. Unless You purchase a subscription to the Service or unless We otherwise agree in writing, access for all Authorized Users terminates upon expiration or termination of the Trial Period.

3.2. Your Responsibilities. You will (a) be responsible for Authorized Users’ compliance with this Agreement and for all activities that occur through Your Authorized Users use of the Service, Installed Software and Documentation, including the restrictions set forth in Section 3.3 below, (b) be responsible for the accuracy, quality and legality of Customer Data, (c) use reasonable efforts to prevent unauthorized access to or use of the Service or the Installed Software, and notify Us promptly of any such unauthorized access or use, (d) use the Service and Installed Software only in accordance with this Agreement and applicable laws and government regulations, and (e) respond to questions and complaints from Authorized Users or third parties relating to Your or Your Authorized Users’ use of the Service and Installed Software and use reasonable efforts to resolve support issues before escalating them to Us.

3.3. Usage Restrictions. You will not, and You will not permit any third party (including any Authorized User), to (a) make the Service or Installed Software available to, or use the Service or Installed Software for the benefit of, anyone other than You, (b) sell, resell, license, sublicense, distribute, rent or lease the Service or Installed Software, or include the Service or Installed Software in a service bureau or outsourcing offering, (c) use the Service or Installed Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights, (d) use the Service or Installed Software to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, and trojan horses, (e) interfere with or disrupt the integrity or performance of the Service or Installed Software or third-party data contained therein, including without limitation any anomalous use of the Service or Installed Software, (f) attempt to gain unauthorized access to the Service or its related systems or networks, (g) copy the Service or Installed Software or any of their respective parts, features, functions, or user interfaces, (i) frame or mirror any part of the Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in this Agreement, (j) access the Service or Installed Software in order to build a competitive product or service, (k) reverse engineer the Service or any of its associated software or the Installed Software (to the extent such restriction is permitted by law), (l) remove any proprietary notices from the Service, Installed Software, or Documentation, or (m) access the Service or Installed Software for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

3.4. Privacy. Our Privacy Policy describes the collection, use, and sharing of certain information that may be provided in connection with Your use of the Service. By using the Service, You acknowledge that Customer Data will be processed in accordance with Our Privacy Policy and this Agreement and may be processed in a country where it was collected, as well as in countries where privacy laws may be less stringent, including the United States. By using the Service or submitting Customer Data through the Service, You expressly consent to such processes. To the extent You or one of Your representatives provide Us personally identifiable information about a named person or entity in connection with this Agreement, You represent and warrant that You have that person’s or entity’s consent to do so.

4. SECURITY AND ACCESS TO CUSTOMER DATA

4.1. Protection of Customer Data. We will maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing unauthorized access, use, modification or disclosure of Customer Data by Our personnel.

4.2. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) the accuracy, quality, and legality of Customer Data; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Service; (c) Customer’s information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services (“Customer Systems”); (d) the security and use of Customer’s and its Authorized Users’ access credentials; and (e) all access to and use of the Service directly or indirectly by or through the Customer Systems or its or its Authorized Users’ access credentials, with or without Customer’s knowledge or consent.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. Our Materials. Subject to the limited rights expressly granted hereunder, We retain all of Our rights, title, and interest in and to Our Materials and all of Our intellectual property rights therein. With respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Materials. No rights are granted to You hereunder other than as expressly set forth herein or, with respect to Third-Party Materials, the applicable third-party license.

5.2. Customer Data. As between You and Us, You are and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights therein, subject to the rights and permissions granted in Section 5.3.

5.3. Our Rights to Use Customer Data. You grant Us the right to use Customer Data, in compliance with applicable law, in order to: (a) provide the Service in accordance with this Agreement and the Privacy Policy, (b) prevent or address service, support, or technical problems, or (c) as may be required by law.

5.4. Our Rights to Use Operational Metrics. You grant Us the right to use information reflecting the access or use of the Service by or on behalf of Customer or any Authorized User and inferences drawn therefrom, in compliance with applicable law, in an aggregated and de-identified manner, without use of any personally identifiable information, provided that it does not identify You or Your agents, representatives, customers or employees and is not attributable to such persons or entities.

5.5. Our Rights to Use Feedback. You grant to Us a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the

Service, Installed Software, Documentation, and any of Our other services, or Our Materials any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Authorized Users to Us or any of Our authorized resellers.

6. CONFIDENTIALITY

6.1. Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Our Confidential Information includes Our Materials; and Confidential Information of each party includes the terms and conditions of this Agreement and all quotes, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

6.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, disclose Confidential Information of the Disclosing Party only to those of its employees, contractors and advisors who need that access for purposes consistent with this Agreement and who are bound by confidentiality obligations to the Receiving Party at least as protective as those herein. Neither party will disclose the terms of this Agreement or any quote to any third party other than its legal counsel, and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its legal counsel or accountants will remain responsible for such legal counsel’s or accountant’s compliance with this Section 6.2.

6.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or by the order of a court or similar judicial or administrative body to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

7. REPRESENTATIONS AND DISCLAIMERS

7.1. Representations. Each party represents to the other party that it has validly entered into this Agreement and has the legal power to do so.

7.2. Disclaimers. Except as expressly provided herein, neither party makes any warranty of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose, title or non-infringement, to the maximum extent permitted by applicable law. The Service, the Installed Software, the Documentation, and the Support Services are provided “AS IS,” exclusive of any warranty whatsoever. Pulse Secure does not warrant that Customer’s use of the Service or Installed Software will be uninterrupted or error-free or that the Service or Installed Software will meet Customer’s requirements, operate in combination with third-party services used by Customer or maintain Customer Data without loss. Pulse Secure is not liable for delays, failures or problems inherent in use of the internet and electronic communications or other systems outside Pulse Secure’s control. Customer may have other statutory rights, but any statutorily required warranties will be limited to the shortest legally permitted period.

7.3. Benefit of the Bargain. The warranty disclaimer set forth above in Section 7.2 and the limitation of liability set forth in Section 8 below are fundamental elements of the basis of the agreement between Pulse Secure and Customer. We would not be able to provide a Trial Period for the Service on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Our suppliers.

8. LIMITATION OF LIABILITY

8.1. Limitation of Liability. EXCEPT FOR ANY BREACH OF SECTION 4 OR SECTION 6, OR YOUR OBLIGATIONS UNDER SECTION 3.3, NEITHER PARTY’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED US\$100. WITH RESPECT TO ANY BREACH OF SECTION 4 OR SECTION 6 RELATING TO PERSONALLY IDENTIFIABLE INFORMATION, NEITHER PARTY’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE GREATER OF US\$2,500. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

8.2. Exclusion of Consequential and Related Damages. EXCEPT FOR ANY BREACH OF SECTION 6 OR YOUR OBLIGATIONS UNDER SECTION 3.3, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. TERM AND TERMINATION

9.1. Term of Agreement; Trial Period. This Agreement commences on the Effective Date and continues until the Trial Period has expired or been terminated. The Trial Period commences when You are first provided access to the Service and continues for 30 days unless earlier terminated. Any extension of the Trial Period is subject to mutual written agreement.

9.2. Termination for Convenience. Either party may terminate this Agreement upon written notice to the other for any reason or no reason.

9.3. Customer Data; Deletion. We will maintain Customer Data for 60 days after the expiration or termination of the Trial Period. If Customer purchases a subscription to the Service within such time, all such data will be preserved. After such date, We will have no obligation to maintain

or provide CustomerData.

9.4. Surviving Provisions. Each party is responsible for any obligations to the other party that arose prior to any termination or expiration of this Agreement. Any terms and conditions of this Agreement that by their nature or otherwise reasonably should survive termination or expiration of this Agreement, including without limitation Sections 5 and 6, will survive any such termination or expiration.

10. NOTICES, GOVERNING LAW, AND DISPUTE RESOLUTION

10.1. Manner of Giving Notice. All notices, permissions, and approvals hereunder must be in writing and will be deemed given upon: (a) personal delivery, (b) the third business day after mailing, (c) the second business day after sending via an overnight delivery service; or (d) the first business day after sending by email (provided email is not sufficient for notices of material breach, termination, or an indemnifiable claim). Notices from You to Us shall be addressed to:

Pulse Secure, LLC
Attn.: Legal Department 10377 South
Jordan Gateway, Suite 110 South
Jordan, Utah 84095
Email: legal@ivanti.com

Notices from Us to You shall be addressed to You at the customer address set forth immediately above the preamble of this Agreement.

10.2. Governing Law and Venue. This Agreement and any disputes arising under it will be governed by the laws of the State of Utah without regard to its conflict of laws provisions, and each party consents to the personal jurisdiction and venue of the state or federal courts located in Salt Lake City, Utah. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

10.3. Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 6 or, in the case of Customer, Section 3.3, may cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to seek equitable relief. Such remedies are not exclusive and are in addition to all other available remedies.

11. GENERAL PROVISIONS

11.1. Export Compliance. The Service, the Installed Software, and other technology We make available under this Agreement, and derivatives thereof contain encryption and are subject to export laws and regulations of the United States and other jurisdictions. You represent and warrant that You and Authorized Users are not named on any U.S. government denied-party list and are not citizens of, or otherwise located within, an embargoed nation. You will not access or use, or permit others to access or use, the Service, Installed Software or other technology We make available under this Agreement in a U.S.-embargoed country, or permit access or use by any denied party, or permit access or use for military end-uses or other U.S. government restricted end-uses, or otherwise in violation of any U.S. export law or regulation.

11.2. Miscellaneous. This Agreement is the entire agreement between You and Us regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the waiver is to be asserted. No failure or delay by either party in exercising any right under this Agreement constitutes a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries under this Agreement.

11.3. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld).

11.4. US Government Rights. Each of the Documentation and each software component that We use to provide the Service is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. If Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Service and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.