



## End User License Agreement (Pulse Secure Products)

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Capitalized terms used in this Agreement are defined in Section 1 (Definitions).

### 1. Definitions.

The following definitions apply to capitalized terms used in this Agreement:

- a. "**Agreement**" means this End User License Agreement ("**EULA**").
- b. "**Approved Source**" is Ivanti, or a distributor or reseller authorized by Ivanti to distribute the Software in the territory in which You are located.
- c. "**Beta**" is a version of the Software that (i) is still in its testing phase and has not yet been released commercially.
- d. "**Cloud Services**" means those services provided to You by a cloud services provider which pertain to the operation, administration, maintenance, and provisioning of a cloud infrastructure service including activities involved in controlling, planning, allocating, deploying, coordinating, and monitoring the resources of a network, network planning, configuration management, fault management, security management, performance management, bandwidth management, or other such services. Such services may be licensed as a monthly subscription or on a term subscription basis.
- e. "**Documentation**" for a particular Software Version or Release means Ivanti's published user guide, release notes and feature listings for that Version or Release.
- f. "**Effective Date**" is the date on which You accept the terms and conditions of this Agreement by clicking "Agree" or otherwise accepting this Agreement through use of the Software.
- g. "**Ivanti**" means Pulse Secure, LLC, a wholly owned subsidiary of Ivanti, Inc.
- h. "**Ivanti Platform**" means any hardware, network appliance, equipment or devices marketed, and sold by Ivanti.
- i. "**License Metric**" is a parameter for the access or use of the Software, as described in Section 5.
- j. "**License Metric Unit**" is a unit of measurement for the number of seats for the License Metric that You purchased for access or use of the Software.
- k. "**Licensed Server**" is either: (1) a designated environment; (2) a designated service provider cloud environment; or (3) a single server or cluster of servers operating as a single entity at Your facility that You have identified to Ivanti at the time of purchase or download which is running a supported operating or computing platform.
- l. "**NFR**" means "Not for Resale" and is limited to demonstration use by a reseller.
- m. "**Per Instance License**" is a license of each specific realization of the Software used to implement the Ivanti product(s), and each implementation is referred to as an "Instance" herein.
- n. "**Proof of Entitlement**" is Ivanti's acceptance of Your order, as detailed on Your purchase order, for a license to the Software as set forth in an order confirmation or other Ivanti-issued written or electronic confirmation. The Proof



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of Entitlement must identify You, the Software licensed, any applicable License Metric and, if applicable, the License Metric Units.

o. "**Release**" is a particular object code image of a Software product that is identified by a release naming convention starting with "x.y" and optionally followed by an additional image identifying string.

p. "**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.

q. "**Special Purpose License**" means any of the licenses described in Section 6 of the Agreement.

r. "**Subscription License**" means a license to Software for a finite, fixed term of use.

s. "**Update**" means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that Ivanti makes generally available free of incremental charge to customers.

t. "**Version**" means one or more Releases of a particular Software product with a common "x.y" naming convention in the first two places of the Release identifier.

u. "**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 has entered into this Agreement and/or is the original end user purchaser of a license to the Software from an Approved Source as set forth in the Proof of Entitlement.

v. "**Your Data**" means the substantive data input by You.

w. "**vADC**" means a specific product group that includes Virtual Traffic Manager ("vTM"), Services Director, and Web Applications Firewall, and other similar Product(s) as may be added by Ivanti from time to time.

### 2. License Grant.

a. Grant of License. When You purchase or rightfully receive a license to the Software, Ivanti grants You, subject to Your payment of the applicable fees, a limited, non-exclusive, revocable, non-sublicensable, non-transferrable right to install (if necessary) and access and use that Software, only in object code form, for the term stated in Your Proof of Entitlement, solely for internal business operations and subject to the terms of this Agreement and in accordance with the Documentation. You may only use the Software in a manner for which You have purchased and obtained a valid license as indicated in Your Proof of Entitlement. The software image that contains Software that You license might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license at an additional fee. Specific features and functionality are included in Your license to the Software only if Ivanti Documentation for that Version of the Software identifies those features and functionality as being included. For example, without limiting the foregoing, if You are a user of the Pulse Policy Secure Virtual Appliance, You are only licensed to use the Pulse Profiler, and 10 Polsec licenses included therewith, if You have licensed the Advanced or Enterprise editions of the Pulse Access Suite.

b. Cloud Services License Grant. When You purchase or rightfully receive a license to the Cloud Services Software, Ivanti grants You, subject to Your payment of the applicable fees, a limited, non-exclusive, revocable, non-exclusive, non-sublicensable, non-transferrable right to install (if necessary) and license to access and use that Software, only in object code form, for the term stated in Your Proof of Entitlement, solely for internal business operations and subject to the terms of this Agreement and in accordance with the Documentation. You may only use the Software in a manner for which You have purchased and obtained a valid license as indicated in Your Proof of Entitlement. The Cloud Services Software is licensed on a per Instance basis for use on a Licensed Server. You may only use the Cloud Services Software to manage, secure, and accelerate application traffic in the manner licensed by You for that Instance. Use of subscription term licenses for Cloud Services Software is limited to one copy of a single Instance running or being used by You at any time and cannot be transferred at anytime. Subscription term licenses are non-cancellable and non-refundable. Monthly subscription-based licenses for the Cloud Services Software as purchased by You are licensed for use only up to the capacity (e.g., throughput, TCP connections, or other specified capacity) licensed by You. For certain Cloud Services Software, You may generate any quantity of Instances of the Software provided that Your collective use of such Instances at any given time may not exceed the amount of capacity set forth in Your Proof of Entitlement, or where applicable, You pay all fees appropriate to Your use of all



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d. Operating System License Grant. In the event that the Software is loaded on a Ivanti Platform, the operating system software installed on the Ivanti Platform that You have purchased along with the Software, and their respective Updates, may only be used on said Ivanti Platform and may not be installed or used on any other appliance. Ivanti virtual appliances may be used on a supported virtual infrastructure.

e. Disaster Recovery. You may make one copy of the Software You have licensed solely for backup and/or disaster recovery purposes

### 3. Software Name.

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

### 4. Term of License.

a. *Subscription License.* If Your license is a Subscription License, then the term of the Subscription shall be as specified on Your Proof of Entitlement. The Subscription License term specified in Your Proof of Entitlement is non-cancellable and non-refundable. You may, renew or reinstate Your Subscription license subject to the terms of Ivanti policies at the time of the renewal and/or reinstatement.

b. *Per Instance License.* If Your license is a Per Instance License (whether perpetual, subscription or per usage based), then the term shall be as specified on Your Proof of Entitlement.

c. *Special Purpose License.* If Your license is a Special Purpose License (see Section 6, below), then its term shall be as stated in Your Proof of Entitlement. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your Special Purpose License shall be up to a maximum of eight (8) weeks from the date that You first received the Software, whether via download unless otherwise specified in a separate written agreement which You may have entered into with Ivanti.

d. *Perpetual License.* If You have a valid Proof of Entitlement that clearly states that Your license is "Perpetual", then, except as stated below, Your license is perpetual, subject only to termination for non-payment of license fees or other breach of this Agreement. An otherwise Perpetual license to the operating system software installed on the Ivanti Platform, along with the Software, and their respective Updates will nonetheless terminate if and when You sell or otherwise transfer the Ivanti Platform on which You use it.

### 5. License Metrics.

License Metrics include the following:

a. *Named Users* - the number of individuals to which You and Your authorized users grant access for one or more services furnished, managed, or provisioned by any Instance of the Software. A Named User who accesses such services through multiple devices is nonetheless counted as a single Named User.

b. *Concurrent Sessions* - the number of connections to which You and Your authorized users grant access for one or more services concurrently furnished, managed, or provisioned by any Instance of the Software.



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c. *Other Forms of License.* Other License Metrics may be defined for specific Software as specified in Your Proof of Entitlement.

### **6. Special Purpose Licenses.**

Special Purpose Licenses are limited, short-term licenses that may not be used for any production or commercial application or similar use.

a. *NFR-based License.* If Your Proof of Entitlement for certain Software (or a separate written agreement with Ivanti) identifies Your license as "Not for Resale" or with words of like meaning, AND if You are a Ivanti-authorized distributor or reseller, then for the license term (see Section 4, above) You may use the Software, but only to demonstrate features and performance of the Software to prospective buyers, and only while You remain a Ivanti-authorized distributor or reseller. The Software provided under this license may not be resold.

b. *Evaluation/Beta Use-based License.* If Your Proof of Entitlement for certain Software (or a separate written agreement with Ivanti) identifies Your license as "Evaluation Use", "Beta Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

### **7. License Restrictions; Limitations and Prohibitions.**

This Section 7 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Per Instance, Special Purpose, Subscription, Perpetual or otherwise:

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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 to another entity, whether voluntarily or by operation of law, any right or license in or to the Software or under any Proof of Entitlement. Any such attempted sublicense, transfer or assignment shall be void.

d. *Restructures.* If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.

e. *You are Sole Licensee.* No rights or licenses in the Software shall arise under this Agreement in favor of anyone other than You.

f. *Virtual Appliance.* You will need to purchase an additional license should You download and/or use a Ivanti Virtual Appliance. However, there are certain Ivanti Product(s) for which an additional license may not be required.

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(ii) Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by Ivanti;

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(viii) Attempt to gain unauthorized access to the Software or its related systems or networks;

(ix) Copy any ideas, features or functions or graphics of the Software; or

i. You agree to defend and indemnify Ivanti against any claim arising out of a violation of Your obligations under this Section.

### **8. Termination.**

a. *Early Termination for Breach.* This Agreement shall automatically terminate If at any time You:

(i) fail to make timely payment of any applicable fees due in respect of the Software, or

(ii) breach any term of this Agreement

b. *Effect of Termination or Expiration.* If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to Ivanti all copies of the Software and related documentation in Your possession or control. In the event You have a paid cloud-based Subscription License, Ivanti may permit You to access the Software solely to the extent necessary for You to retrieve a file of Your Data provided You request such access within sixty (60) days prior to the termination of the paid Subscription license. You agree and acknowledge that Ivanti has no obligation to retain Your Data and that Your Data may be irretrievably deleted sixty (60) days following the termination of the Subscription License.

c. *Survival.* The provisions of Sections 1, 7, 8.b, 8.c, and 9-27 shall survive termination or expiration of this Agreement.

### **9. Confidentiality.**

You agree that aspects of the Software and associated documentation are the confidential property of Ivanti. As such, You shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which, at a minimum includes restricting access to the Software to Your employees and contractors having a need to use the Software for Your internal business purposes.

### **10. Your Data**

You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, exportability, appropriateness, and ownership of Your Data. Ivanti treats Your information and Your Data in accordance with its Privacy Policy found at <https://www.ivanti.com/company/legal/privacy-policy>.

### **11. Ownership.**

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### **12. Limited Warranties/Intellectual Property Indemnification.**





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(ii) For any other license of Software under this Agreement, Ivanti warrants for Your sole benefit that for a period of ninety (90) days from the Effective Date (the "Software Warranty Period"), the Software shall substantially conform to the Documentation. You may not make a software warranty claim after the lapse of the Software Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF IVANTI FOR BREACH OF ANY WARRANTY REGARDING SOFTWARE UNDER THIS SECTION 12 SHALL BE THE REPLACEMENT OF THE DEFECTIVE SOFTWARE.

b. No warranty will apply if the Software (i) has been altered, except by Ivanti; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation and instructions supplied by Ivanti; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed pursuant to a Special Purpose License. In addition, Software is not 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. You are solely responsible for backing up its programs and Your Data to protect against loss or corruption

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d. *Indemnification.* Ivanti shall defend and indemnify You, at its own expense, from any suit brought against You based upon a claim that the Software infringes any third party trade name, patent or copyright ("IP Claims") and will pay all damages and costs that a court awards against You as a result of such claim, provided that You: (i) promptly give Ivanti written notice of such IP Claim after becoming aware of it and furnish Ivanti with a copy of each communication, notice or other document exchanged with the claimant relating to the IP Claim; (ii) give Ivanti complete control of the defense and settlement of the IP Claim; and (iii) fully cooperate with Ivanti in the defense or settlement of such claim. Ivanti shall have no obligation or liability with respect to any IP Claim, which is based in whole or part upon: (a) the combination, operation or use of the Software with any hardware, software or other device supplied by a party other than Ivanti and the claim would not have arisen but for such combination, operation or use; (b) any modification of the Software which is not pre-approved by Ivanti in writing; (c) any specifications, designs or instructions provided to Ivanti by or on behalf of You; (d) Your failure to promptly modify the Software (e.g., install a supported Release provided by Ivanti), if the claim could have been avoided had You followed Ivanti's directions for the implementation of such modification; or (e) use of the Software in a manner other than that for which it was designed or in a manner other than as specified by Ivanti. If use of the Software is enjoined or threatened to be enjoined in connection with an IP Claim, Ivanti may, at its expense, either: (y) obtain for You the right to continue to use the Software, or (z) replace the Software with non-infringing software that has substantially similar features and functionality, the use of which is not restricted or prohibited. If in Ivanti's sole judgment, neither of the foregoing actions is reasonably available to it, then Ivanti will refund the amount paid by You for the Software depreciated on a five year straight-line basis. THE REMEDIES SET FORTH IN THIS SECTION 12.d ARE YOUR SOLE AND EXCLUSIVE REMEDIES FROM IVANTI WITH RESPECT TO ANY IP CLAIM.

### **13. Limitation of Damages.**



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TO THE EXTENT PERMITTED BY LAW:

- a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF IVANTI, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS TO YOU FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE PRICE PAID BY YOU FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE CURRENT TERM.
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### **15. 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.

### **16. Federal Provisions.**

Notwithstanding any provision of law, regulation or policy, if You are an employee of an agency of the government of the United States of America ("federal agency") and are using Ivanti software or services on behalf of that federal



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agency, in performance of your official duties, the following sections of the Agreement are amended as follows. (1) Section 19 Governing Law does not apply. This Agreement shall be governed, interpreted and enforced in accordance with the federal laws of the United States of America; to the extent permitted by federal law, the laws of the State of California will apply in the absence of federal law. (2) The entirety of Section 7.i, concerning license restrictions, limitations, and prohibitions, and the second sentence of Section 13.e, concerning the limitation of damages, do not apply to federal agencies. Liability of a federal agency for any breach of the terms of service or this Agreement, or any claim arising from the terms of service or this Agreement, shall be determined under the Federal Tort Claims Act, or other governing authority. Liability of Ivanti for any breach of this Agreement, or any claim arising from this Agreement, shall be determined by applicable federal law.

### **17. Audit.**

Ivanti has the right to inspect and audit You and require You to provide written assurance satisfactory to Ivanti to confirm compliance with the EULA, including, without limitation, requesting You to email Ivanti a report generated by the Software detailing use of the Software by You. At Ivanti's sole option, Ivanti may invoice You, and You agree to pay, for any (i) throughput amounts, and (2) use of Software functions or features and other related software which exceeds or differs from use of the Software in a manner for which You have purchased and obtained a valid license as indicated in Your Proof of Entitlement.

### **18. Third Party Software.**

a. Any licensor of Ivanti whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were Ivanti.

b. Certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s).

c. If the Software has embedded in it MaxMind Inc.'s GeoLite2 Database, You agree that:

(i) You are granted only a personal, nontransferable, and nonexclusive right to use the GeoLite2 Database only for Your internal purposes;

(ii) MaxMind, Inc. and Ivanti make no representations or warranties in connection with the GeoLite2 Database; and

(iii) MaxMind, Inc. shall not be liable to You for any indirect, consequential, incidental or special damages arising out of the use or license of the GeoLite2 Database, regardless of the theory of liability, including negligence and strict liability.

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### **19. Governing Law.**

This Agreement (including all documents incorporated herein) shall be governed by the laws of the State of Utah (without reference to its conflicts of laws principles). The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply. For any disputes arising under this Agreement that You may have with Ivanti, You hereby consent to the personal and exclusive jurisdiction of, and venue in the federal and state courts located in Salt Lake County, Utah.

### **20. Force Majeure.**

Except for Your duty to make payment for Software licenses, neither party will be responsible for any failure or delay in its performance due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, embargoes, acts of terrorism, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises ("Force Majeure"), provided that the party gives prompt written notice thereof to the other party and uses its diligent efforts to resume performance. The performance of the party claiming the Force Majeure event shall be excused for the duration of said event.

### **21. Transition of This Agreement.**

If You licensed any Software from Ivanti under a different End User License Agreement, then this Agreement shall apply to that Software if and when, following posting of this Agreement online, You either purchase additional





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License Metric Units for the Software, renew the license at the end of the license term, or reinstate the license after the license expires.

### **22. Complete Agreement; Modifications.**

Except as otherwise provided in a separate agreement between You and Ivanti, this Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in a separate agreement between You and Ivanti, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.

### **23. Severability.**

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remainder of this Agreement.

### **24. Notification.**

Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in a writing, if to Ivanti by mail to 10377 South Jordan Gateway South Jordan, UT 84095 USA, Attn.: Legal Department, provided that the notice identifies You by name, address and email address; or, if to You, by email to Your contact email address or by mail addressed to Your street address that is associated with Your user account for registration with Ivanti. If You have no such user account, then notification shall be deemed given to You by emailing or mailing notice to any office or contact email address for the Approved Source from which You acquired Your license.

### **25. Waiver.**

The failure of Ivanti to require Your performance of any provision of this Agreement shall not affect Ivanti's full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.

### **26. Translations.**

Several translations of this Agreement may exist to localize in other language. To the extent of any inconsistency between the English version of this Agreement and any non-English version the English version shall govern.

### **27. Data Use.**

Ivanti may collect, compile or process a variety of statistical and other information about You and end users of the Software and associated hardware including:

- Device identifiers, IP addresses, and other information about computing systems, applications and networks;
- End user names, email addresses, phone numbers, IMEIs;
- Information about activity on computing systems, applications and networks;
- File and communications content and metadata; and
- Information provided to us through cloud services and dashboards associated with the Software.

Subject to applicable contractual and legal restrictions, we use the information described above (sometimes in combination with other information we obtain) for the following purposes:

- To analyze and improve the Software;
- To monitor adoption rates of Updates to the Software;
- To provide maintenance and technical support;
- To provide Updates;



## End User License Agreement (Pulse Secure Products)

- To manage and renew Subscription Licenses;
- To enforce the legal terms that govern the Software;
- To comply with applicable laws and to protect rights and property; and
- For other purposes requested or authorized by You.

Ivanti conducts the above activities on the basis of its legitimate interests in operating our business and protecting our customers. Where appropriate, these activities also are conducted on the basis of consent. For further information, see Ivanti's privacy notice at <https://www.ivanti.com/company/legal/privacy-policy>.