



## Subscription Agreement (All Products)

This subscription agreement (this “**Agreement**”) sets forth the legally binding terms for use of the Products and with respect to Order Forms (each as defined below). This Agreement is by and between Ping Identity Corporation (“**Ping Identity**”) and the company or entity on whose behalf you are accepting this Agreement (“**Customer**”). You represent that you have the authority to bind Customer to the terms of this Agreement. By agreeing to the terms of this Agreement, by accessing, using or installing any part of the Products, or by executing an Order Form that references this Agreement, Customer expressly agrees to and consents to be bound by all of the terms of this Agreement. If Customer does not agree to any of the terms of this Agreement, Customer is prohibited from downloading, installing, activating or using the Products or executing an Order Form that references this Agreement. The effective date of this Agreement is the date set forth on an Order Form (if applicable) or otherwise the date on which Customer downloads, installs, activates or uses the Products (the “**Effective Date**”). Collectively, Ping Identity and Customer may be referred to as the “Parties” or in the singular as a “Party.” Certain capitalized terms used herein are defined in Section 12. The Parties agree as follows:

### 1. General.

**1.1 Provision of Service.** Ping Identity shall make the Service available to Customer during the subscription term specified in the applicable Order Form(s) and grants to Customer a limited, non-exclusive, non-sublicenseable, non-transferable right to access and use the Service, solely for Customer’s business use, all in accordance with this Agreement, the applicable Order Form(s) and the Documentation.

**1.2 Software License Grant.** Ping Identity hereby grants Customer, during the subscription term specified in the applicable Order Form(s), a limited, non-exclusive, non-sublicenseable, non-transferable license to install the Software, in machine-readable form only, and to use the Software solely for Customer’s business use, all in accordance with this Agreement, any applicable Order Form(s) and the Documentation.

**1.3 Delivery and Installation of the Software.** The Software will be delivered to Customer by electronic download. Customer will be solely responsible for installing any Software as

permitted under this Agreement unless otherwise set forth in an Order Form. All Software will be deemed accepted upon delivery unless otherwise set forth in an Order Form.

**1.4 Professional Services.** Customer may purchase Professional Services with respect to the Products, and any such services and related Fees shall be set forth in an Order Form (which may include an SOW). If applicable, while on Customer premises for Professional Services, Ping Identity personnel shall comply with reasonable Customer rules and regulations regarding safety and conduct made known to Ping Identity in writing prior to such engagement and will, at Customer's reasonable request, promptly remove from the project any Ping Identity personnel not following such rules and regulations.

**1.5 Support for Products.** Unless otherwise identified on an Order Form, Customer shall be entitled to receive Ping Identity's standard support for the Products at no additional cost ("**Support Services**"). Ping Identity is not obligated under the terms of this Agreement to provide any customer service or support to any User other than Customer's administrators; such responsibility (if any) shall remain with Customer.

**1.6 Order Forms; Affiliate Usage.** Customer and its Affiliates may place orders under this Agreement by executing Order Form(s). When an Affiliate of Customer signs an Order Form under this Agreement, the Affiliate shall be considered the Customer for purposes of such Order Form and shall be bound by the terms and conditions of this Agreement. Customer may utilize its subscriptions to the Products for the benefit of itself and its Affiliates, provided that: (i) any restrictions (such as quantity limitations) set forth in an Order Form are for the aggregate use by Customer on behalf of itself and its Affiliates; (ii) Customer shall be liable to Ping Identity for all actions and omissions of its Affiliates with respect to the subject matter of this Agreement as if they were those of Customer hereunder; and (iii) notwithstanding the foregoing, in the event that Customer purchases a subscription that is unlimited as to users (or identities or similar licensing metric), Customer shall only be permitted to utilize the rights under such Order Form for itself and those of its Affiliates that are expressly specified on such Order Form.

**1.7 Resellers.** This Agreement specifies the terms and conditions under which Products and Professional Services will be provided by Ping Identity to Customer, whether purchased directly through Ping Identity or indirectly through a Reseller. Purchases through a Reseller will be placed through a separate agreement or ordering document between Customer and the Reseller (the "**Reseller Order**") which shall address, as between Customer and Reseller, any terms and conditions relating to the quantity of entitlements purchased, fees, payment (including any applicable refunds), taxes, and renewals. Customer warrants that it will timely pay to Reseller all amounts under a Reseller Order related to this Agreement. The Reseller Order is between

Customer and the Reseller and is not binding on Ping Identity, and any disputes related to the Reseller Order shall be handled directly between Customer and the Reseller. Similarly, this Agreement is between Ping Identity and Customer, and Customer shall not bring any claims against Reseller related to Ping Identity's provision of the Products and Professional Services under this Agreement and will look solely to Ping Identity for any such claims. In the event of any conflict between this Agreement and a Reseller Order, this Agreement shall govern as between Ping Identity and Customer.

## **2. Use Guidelines.**

**2.1 Restrictions.** Customer shall use the Products solely for its own business purposes in accordance with this Agreement and any related Order Form. Customer shall not, except as expressly permitted by this Agreement: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, operate as a service bureau or managed service, or otherwise commercially exploit or make the Products available to any third party except as expressly contemplated by this Agreement; (ii) modify, adapt, alter, translate or create derivative works of the Products; (iii) reverse engineer, decompile or disassemble the Products (or otherwise attempt to derive the source code or underlying ideas or algorithms of the Software); (iv) take any action that would cause the Products (including any license key) to be placed in the public domain; (v) remove, alter, or obscure any proprietary notices of Ping Identity, its licensors or supplier included in the Products; (vi) send or store Malicious Code or infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material or spam; (vii) interfere with or disrupt the integrity or performance of the Service or the data contained therein, including conducting any load or penetration testing on the Service; (viii) attempt to gain unauthorized access to the Service or its related systems or networks; (ix) circumvent, disable, or interfere with security-related features of the Products or features that enforce limitations on use of the Products; (x) access the Products for the purpose of building a competitive product or service or copying its features or user interface; or (xi) except as otherwise set forth in an Order Form, send or store any personal health information, credit card data, personal financial data or other sensitive data (as defined under applicable data privacy laws) that may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards.

**2.2 Suspension of Service for Critical Cause.** Ping Identity reserves the right to suspend the Service provided to Customer if: (i) Customer is delinquent on any undisputed (in good faith) late payment obligations to Ping Identity or a Reseller for more than thirty (30) days following written notice of such late payment; (ii) Ping Identity reasonably believes that suspension of the Service is necessary to comply with the law or requests of governmental entities; or (iii) Ping

Identity reasonably determines that Customer's use of the Service is in violation of this Agreement. Ping Identity will give advance notice of the suspension, to the extent it is able without causing undue harm or risk. Ping Identity will restore access to the Service in a prompt manner after the underlying cause is mitigated.

### **3. Fees & Payment.**

**3.1 Fees.** Customer shall pay all fees specified in any Order Forms hereunder (the "Fees"). If Customer is purchasing through a Reseller, the applicable Fees will be set forth in Customer's ordering documentation with the Reseller and such Fees will be remitted to Reseller. Except as otherwise provided, all Fees are quoted and payable in United States dollars. Except as otherwise specified herein or in an Order Form, stated Fees are based on the scope of the Product subscriptions purchased and not actual usage, payment obligations are non-cancelable, and Fees paid are non-refundable. In the event that Customer is purchasing a subscription based on the number of individual Users, connections or another metric set forth in an Order Form, and Customer's actual usage exceeds the applicable limit on such metric, overage charges shall apply based on the then-current per-unit rate on the applicable Order Form or as otherwise set forth therein, and Customer shall remit such charges to Ping Identity. Customer agrees that its purchase of the Products is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Ping Identity with respect to future functionality or features.

**3.2 Invoicing & Payment Terms.** All Fees will be invoiced in advance and in accordance with the relevant Order Form. Unless otherwise stated in an Order Form, charges are due net thirty (30) days from the date of the invoice. Customer is responsible for maintaining complete and accurate billing and contact information. This section does not apply if Customer is purchasing through a Reseller.

**3.3 Expenses.** Customer will reimburse Ping Identity for all reasonable travel and other related expenses actually incurred in connection with the performance of Professional Services. Additionally, certain Products offer optional SMS and voice call notification features and in the event that Customer elects to utilize any such SMS or voice call features, Customer will be responsible for all charges incurred by Ping Identity for Customer's use. Unless Customer has prepaid such amounts, Ping Identity will bill Customer in arrears.

**3.4 Overdue Payments.** For those payments that are invoiced, any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at Ping Identity's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. This section does not apply if Customer is purchasing through a Reseller.

**3.5 Taxes.** Customer is responsible for paying or self-assessing all applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes (collectively, "Taxes") associated with its purchases hereunder, above and beyond the Fees, excluding taxes based on Ping Identity's net income or property, unless Customer provides Ping Identity with a valid tax exemption certificate authorized by the appropriate taxing authority. To the extent that any amounts payable by you are subject to withholding taxes, the amount payable shall be grossed up such that the amount paid to Ping Identity net of withholding taxes equals the amount invoiced by Ping Identity. Unless otherwise stated, all prices set forth on an Order Form are exclusive of Taxes. This section does not apply if Customer is purchasing through a Reseller.

**3.6 Audit of Software Usage.** Ping Identity will have the right, upon reasonable prior written notice to Customer, at a mutually agreeable time, and no more than once in any twelve (12) month period, to either audit or have an independent audit firm selected by Ping Identity audit Customer's equipment on which the Software is installed, and all related back-up files, to verify compliance with this Agreement. Any such audit will be conducted during normal business hours in a manner so as not to unreasonably interfere with Customer's normal operations. Such audits will be conducted at Ping Identity's expense. In the event that an audit reveals that Customer has failed to pay Fees consistent with its use of the Software, Customer will remit to Ping Identity the applicable Fees for the overuse, based on the then-current per-unit rate on the applicable Order Form(s), and reimburse Ping Identity for all reasonable costs and expenses incurred by Ping Identity in connection with such audit.

**3.7 Marketplace Purchases.**

(a) For purchases through the marketplace offered by Amazon Web Services, Inc. or its affiliates ("AWS"), or any similarly structured marketplace that Ping Identity may participate in from time to time (each a "**Marketplace**"), the term "Order Form" under the Agreement shall mean any ordering documentation and details for Customer's purchases from Ping Identity that is offered by Ping Identity to Customer through such Marketplace, either as a public listing or a

private offer, which is accepted by Customer. Such Order Forms may be accepted through the applicable Marketplace in lieu of execution by the Parties.

(b) For purchases through a Marketplace, fees will be invoiced in advance and in accordance with the relevant Order Form and Marketplace terms, and remitted to AWS or such other Marketplace provider through the procedures set forth in the Marketplace. Any variable fees or reimbursements, such as the fees set forth in Section 3.3 above, may be required to be remitted directly to Ping Identity in lieu of the Marketplace in the event that there is not a reasonable mechanism to invoice such fees through the Marketplace.

(c) Customer expressly waives and agrees not to exercise any right it may have to downgrade a subscription, terminate an Order Form for its convenience, or otherwise cancel an Order Form under any applicable Marketplace terms and conditions, except as expressly permitted by the Agreement. Any listing of the Products on the Marketplace is simply an offer to make purchases of Products and Professional Services subject to this Agreement and an applicable Order Form, and no terms included in such listing are incorporated herein.

#### **4. Confidentiality.**

**4.1 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. The Receiving Party may disclose Confidential Information to its Affiliates and service providers on a need-to-know basis, and such Affiliates and service providers may use such Confidential Information, in each case only for the purposes of fulfilling Receiving Party's obligations under this Agreement. The Receiving Party shall be liable to the Disclosing Party for all actions and omissions of its Affiliates and service providers with respect to such information as if such actions and omissions were those of the Receiving Party hereunder. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**4.2 Protection.** The Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care), and promptly notify the Disclosing Party upon discovery of any unauthorized access or acquisition of Confidential Information and reasonably cooperate with the Disclosing Party's efforts to prevent, investigate and remediate the breach of confidentiality.

**Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such 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. In the event that the Receiving Party is nevertheless compelled to make such a disclosure, it shall disclose the minimum necessary Confidential Information to comply with such request.

**4.3 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

**4.4 Retention of Confidential Information.** Upon a Party's written request, the other Party will erase, delete or destroy all copies of Confidential Information of the other Party whether or not modified or merged into other materials, and certify in writing to the other Party that such Party has fully complied with these requirements. A Party may retain copies of Confidential Information that are required to be retained by law or pursuant to such Party's reasonable document retention policies, or copies that are incapable of being destroyed because it would be unduly burdensome or cost prohibitive, provided that all such copies remain subject to the restrictions herein for so long as they are retained.

## **5. Customer Data and Security.**

**5.1 Use of Customer Data.** Ping Identity shall not provide the Customer Data to any third parties except as necessary to operate the Service.

**5.2 Customer Responsibilities.** Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data submitted by it and its Users to the Service; and (ii) prevent unauthorized access to, or use of, the Service, and notify Ping Identity promptly of any such unauthorized access or use. Customer is responsible for all actions and omissions of its Users as if they were those of Customer hereunder. If Customer becomes aware of any violation of Customer's obligations under this Agreement by any User, Customer will promptly notify Ping Identity and work with Ping Identity to promptly terminate access of any such User to the Service. Ping Identity reserves the right but not the obligation to remove, or request that Customer remove, any Customer Data from the Service that is reasonably believed to be unlawful or harmful to the Service.

**5.3 Compliance with Laws.** Each Party shall comply with all applicable local, state, national and foreign laws applicable to such Party in connection with this Agreement. Customer shall obtain any authorizations, consents or rights from Users and Third-Party Providers (defined later herein) that are required, and provide any necessary notifications, in each case for the transmission of Personal Data to Ping Identity and other third parties in connection with the Products and the related use and processing by such persons, including as may be necessary under any data protection laws and regulations. Customer shall not provide any Personal Data to Ping Identity that may not be processed by Ping Identity as set forth herein and in the DPA in compliance with applicable law. If required, Customer will include in its applicable privacy policies and/or terms of use any necessary disclosures regarding data collection and usage (including with respect to transfer to third parties) in connection with its use of the Products.

**5.4 Information Security, Audits and Security Assessments.** Ping Identity will implement and maintain reasonable and appropriate technical, administrative and physical security measures designed to protect against unauthorized access to or use of Customer Data. Upon Customer's reasonable written request at any time during the term of the Agreement, Ping Identity will promptly provide Customer with information related to Ping Identity's information security safeguards and practices, which may include one or more of the following as Customer may request: (i) responses to a reasonable information security-related questionnaire, no more than once annually; (ii) copies of relevant third party audits, reviews, tests, or certifications of Ping Identity's systems or processes, which may include an annual SOC 2 Type II report; (iii) any applicable public ISO 27001 certificate and non-public Statement of Applicability; (iv) the results of any recently completed third-party penetration testing on the Service; (v) a summary of Ping Identity's operational practices related to data protection and security; and (vi) making Ping Identity personnel reasonably available for security-related discussions with Customer.

**5.5 Business Continuity/Disaster Recovery.** During the term of this Agreement, Ping Identity will maintain and comply with its then-current Business Continuity and Disaster Recovery Plans. Ping Identity will test such plans at least annually. Upon written request, Ping



Identity will provide (i) a copy of the table of contents to such plan, and (ii) a summary of its annual testing results.

**5.6 Data Privacy Addendum.** The Data Privacy Addendum set forth at <https://www.pingidentity.com/data-privacy-addendum> (the “DPA”) is incorporated by reference into this Agreement.

## **6. Proprietary Rights.**

**6.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Ping Identity reserves all rights, title and interest in and to the Products (and any enhancements, modifications, or derivative works thereof, or other software development and works performed by Ping Identity), including all related intellectual property rights. As between Ping Identity and Customer, Customer owns all rights, title and interest in and to all Customer Data. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2 Suggestions.** Ping Identity shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into its products and services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the Products.

**6.3 Usage Data.** Ping Identity owns any data derived from the operation of the Products that has been aggregated and de-identified so that results are non-personally identifiable with respect to Customer or any User, and nothing herein will prohibit Ping Identity from using such data in the operation of Ping Identity’s business.

## **7. Warranties & Disclaimers.**

**7.1 Warranties.** Each Party represents that it has the legal power to enter into this Agreement. Each Party further represents that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any other person is required in connection with such Party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

**7.2 Performance Warranty for Products.** For a period of ninety (90) days after the date of delivery of the Software and for the duration of a subscription to the Service (in each case, the "**Warranty Period**"), Ping Identity warrants that the Products, when used as permitted by Ping Identity and in accordance with the Documentation, will operate substantially as described in the Documentation. Ping Identity will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to (i) correct any material reproducible error that Customer reports to Ping Identity in writing during the Warranty Period, or (ii) replace the defective Product. In the event that Ping Identity, in its sole discretion, may not achieve either (i) or (ii) as a remedy for breach of this warranty, Ping Identity agrees to accept return of the Product, terminate the subscription to the defective Product and refund Customer all unused, prepaid Fees with respect to the defective Product.

**7.3** Ping Identity warrants that it will provide the Professional Services using reasonable care and skill, and in a manner consistent with industry standards applicable to the provision thereof.

**7.4 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, PING IDENTITY AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. PING IDENTITY DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES OR THE FUNCTIONS CONTAINED IN THE PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION AND RESULTS OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PRODUCTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PING IDENTITY OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY HEREIN. PING IDENTITY MAKES NO WARRANTY REGARDING ANY THIRD-PARTY SERVICE WITH WHICH THE PRODUCTS MAY INTEROPERATE.

## **8. Indemnification.**

**8.1 Indemnification by Ping Identity.** Subject to Section 8.3, Ping Identity will defend at its own expense any action against Customer brought by a third party alleging that the Products, in each case, as delivered, infringe any patents, copyrights or misappropriate any trade secrets, in each case, of a third party, and Ping Identity will indemnify and hold Customer harmless against those costs and damages finally awarded against Customer in any such action or those costs and damages agreed to in a monetary settlement of such action. If the Products become, or in Ping Identity's opinion are likely to become, the subject of an infringement claim, Ping Identity may, at its option and expense, either: (i) procure for Customer the right to continue using the Products; (ii) replace or modify the Products so that they become non-infringing; or (iii) terminate the subscription to the infringing Products and refund Customer any unused, prepaid Fees for the infringing Products covering the remainder of the subscription term after the date of termination. Notwithstanding the foregoing, Ping Identity will have no obligation or liability under this Section 8.1 or otherwise with respect to any infringement or misappropriation claim based upon: (a) any use of the Products not in accordance with this Agreement; (b) any use of the Products in combination with products, equipment, software, or data not supplied or approved in writing by Ping Identity if such infringement would have been avoided but for the combination with other products, equipment, software or data; (c) any use of a prior release of the Software after a more current release has been made available to Customer; or (d) any modification of the Products by any person other than Ping Identity. THIS SECTION 8.1 STATES PING IDENTITY'S ENTIRE LIABILITY AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION.

**8.2 Indemnification by Customer.** Subject to Section 8.3, Customer will defend at its own expense any action against Ping Identity brought by a third party (including any User) alleging any unauthorized or unlawful receipt, processing, transmission or storage of Personal Data by Ping Identity in the performance of its obligations as permitted under this Agreement, resulting from breach of the Customer's obligations regarding such data, and Customer will indemnify and hold Ping Identity harmless against those costs and damages finally awarded against Ping Identity in any such action or those costs and damages agreed to in a monetary settlement of such action.

**8.3 Indemnification Conditions.** "Indemnification Conditions" means the following conditions, which a Party must comply with to be entitled to the defense and indemnification obligations of the other Party under this Agreement. The indemnified Party must (i) notify the indemnifying Party promptly in writing of such claim or allegation, setting forth in reasonable detail the facts and circumstances surrounding the claim, provided that an Indemnified Party's

failure to promptly notify shall only relieve the indemnifying Party's indemnification obligations to the extent the indemnifying Party was prejudiced by such failure; (ii) give the indemnifying Party sole control of the defense thereof and any related settlement negotiations, provided that an indemnified Party may participate in its defense at its own cost and expense, and shall not make any admission of liability or take any other action that limits the ability of the indemnifying Party to defend or settle the claim; and (iii) cooperate and, at the indemnifying Party's request and expense, assisting in such defense or settlement.

## **9. Limitation of Liability.**

**9.1 Limitation of Liability.** NEITHER PARTY'S CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO PING IDENTITY OR TO A RESELLER OF PING IDENTITY HEREUNDER FOR THE PRODUCT OR PROFESSIONAL SERVICE GIVING RISE TO THE LIABILITY IN THE 12 MONTHS PRECEDING THE INCIDENT, OR THE OTHER PARTY'S ACTUAL DAMAGES, WHICHEVER IS LOWER. THE FOREGOING SHALL NOT APPLY TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, TO CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 3, OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR (i) ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, (ii) COST OF COVER, (iii) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUES AND LOSS OF PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING EXCLUSIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **10. Term & Termination.**

**10.1 Term of Agreement.** This Agreement commences on the Effective Date and continues for as long as the subscription term set forth in any related Order Form (and any subsequent Order Forms) or as otherwise agreed to by Ping Identity in writing, unless earlier terminated as set forth herein.

**10.2 Termination for Cause.** Either Party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach of this Agreement by the other Party if such breach remains uncured at the expiration of such period; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**10.3 Effects of Termination.** Upon expiration or termination of this Agreement all rights to use the Products (including all licensed rights for the Software) granted in this Agreement will immediately cease to exist and Customer must promptly discontinue all use of the Products.

**10.4 Outstanding Fees.** Termination does not relieve Customer of the obligation to pay any Fees accrued or payable to Ping Identity prior to the effective date of termination. Upon any termination for cause by Customer, Ping Identity will refund Customer any unused, prepaid Fees covering the remainder of the subscription term after the date of termination. Termination for Customer's material uncured breach does not relieve Customer of any obligation to pay Fees that would have been payable but for such termination.

**10.5 Surviving Provisions.** Any provisions that are by their nature intended to survive termination of this Agreement will continue to survive following termination.

## **11. General Provisions.**

**11.1 Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment

relationship between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

**11.2 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**11.3 Notices.** All notices under this Agreement shall be in writing and may be sent by electronic mail. Notices shall be deemed to have been given upon the second business day after sending by email. Notices to Ping Identity shall be sent to [legal@pingidentity.com](mailto:legal@pingidentity.com). Notices to Customer, unless otherwise indicated by Customer, may be sent to the individual that executed this Agreement on behalf of Customer and/or an Administrator by email, or at the address listed at the beginning of this Agreement.

**11.4 Waiver and Cumulative Remedies.** Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision of this Agreement. Other than as expressly stated herein, the rights and remedies provided herein are in addition to, and not exclusive of, any other rights and remedies of a Party at law or in equity.

**11.5 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in force and effect.

**11.6 Product Specific Terms.** Customer understands and agrees that certain Products and Professional Services are subject to supplemental terms available at <http://www.pingidentity.com/product-terms> (or its successor site) and such terms are incorporated herein solely with respect to such specified Products and Professional Services.

**11.7 Third-Party Services.** The Products may be used by Customer in connection with services or applications that interoperate with the Products that are provided by Customer or a third party ("Third-Party Services"). Third Party-Services are not Products nor provided by Ping Identity, and their use by Customer is subject to Customer's agreement with their applicable providers ("Third-Party Providers"). Ping Identity does not guarantee that the Products will

interoperate with any particular Third-Party Service, and Ping Identity's support obligations shall not extend to any Third-Party Services.

**11.8 Open Source Software.** Certain items of software embedded within the Products are subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software is owned by third parties. Nothing in this document limits Customer's rights or obligations under the terms and conditions of any applicable end user license for the Open Source Software. In no event do any authors of any Open Source Software provide any warranties with respect to such Open Source Software and such authors disclaim liability of any kind for any use of the Open Source Software. The terms of the licenses for the Open Source Software shall not impose any additional restrictions on your use of the Products as permitted by this Agreement or negate or amend any of our responsibilities with respect to the Products.

**11.9 Free Trial Products.** If Customer uses a Product or functionality that Ping Identity makes available to Customer to try at Customer's option, at no additional charge, and which is clearly designated as "beta," "trial," "pre-GA," "pilot," "preview," "early access," "evaluation," "proof of concept (POC)," or by a similar designation ("**Free Trial Product**"), then the applicable provisions of this Agreement will govern that Free Trial Product (unless otherwise agreed), and Ping Identity will make such Free Trial Product available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer agreed to use such Free Trial Product, (b) the start date of any subscription purchased by Customer for such Product, or (c) termination of the Free Trial Product by Ping Identity in its sole discretion. A free trial period may be extended upon mutual agreement by Ping Identity and Customer. Notwithstanding anything to the contrary in this Agreement, a Free Trial Product is provided "AS IS." PING IDENTITY MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO A FREE TRIAL PRODUCT. PING IDENTITY SHALL NOT HAVE ANY LIABILITY FOR CUSTOMER'S USE OF THE FREE TRIAL PRODUCTS UNDER THIS AGREEMENT UNDER ANY THEORY OF LIABILITY (NOWITHSTANDING ANY LIMITATION OF LIABILITY CONTAINED ELSEWHERE HEREIN), UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE PING IDENTITY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A FREE TRIAL PRODUCT IS \$1,000. ANY DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER'S FREE TRIAL PRODUCT ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF THE FREE TRIAL PRODUCT TERM.

**11.10 Assignment.** Neither Party may assign or transfer, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Software) to any third party without the other Party's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party shall have the right to assign

this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise (limited to the scope of the pre-assignment business of the assigning Party), provided that such assignment is not to a competitor of the other Party. Unless otherwise specifically agreed to by the non-assigning Party, no assignment by either Party shall relieve the assignor from its obligations pursuant to this Agreement. Any attempted assignment or transfer in violation of the foregoing will be null and void. All provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Ping Identity and Customer. Ping Identity shall be liable for the actions and omissions of its subcontractors that it engages with respect to its obligations under this Agreement.

**11.11 Applicable Law and Venue; Jurisdiction.** The laws of the State of Delaware, USA (without regard to any conflict of laws principles that would require the application of the laws of any other jurisdiction) govern this Agreement and all matters arising out of or relating to this Agreement, including, without limitation, validity, interpretation, construction, performance, and enforcement. Any dispute, action, claim or cause of action (including non-contractual disputes or claims) arising out of, relating to, or in connection with this Agreement or the Products shall be only brought in and is subject to the exclusive jurisdiction of the state and federal courts located in Delaware, USA. Each Party waives, to the fullest extent of the law, any objection to venue in such courts, and each Party hereby irrevocably submits and consents to the exclusive jurisdiction of such courts. To the extent permitted by law, the Parties expressly waive any right to trial by jury. In any action to enforce this Agreement the prevailing party will be entitled to reasonable costs and attorneys' fees.

**11.12 Governing Language.** The governing language for this Agreement and for negotiation and resolution of any disputes related to this Agreement is the English language. Each Party waives any right it may have under any law in any state or country to have the Agreement written in any language other than English.

**11.13 U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualify as "commercial items" as defined in 48 C.F.R. 2.101. Ping Identity provides the Products for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Products include only those rights customarily provided to the public as defined in this Agreement. This customarily commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). This section is in lieu of, and supersedes, any



other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data. If a government agency has a need for rights not conveyed under this Agreement, it must negotiate with Ping Identity to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable Order Form or amendment to this Agreement.

**11.14 Marketing and Publicity.** Upon execution of this Agreement, Ping Identity may identify Customer as a customer of Ping Identity on Ping Identity's website as well as within any written and/or electronic marketing material relating to Ping Identity's products and/or services. Customer shall not publish or disclose to any third party any opinions relating to, or test results, benchmarking or comparative study involving any Product without the prior written consent of Ping Identity.

**11.15 Force Majeure.** If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a Party including but not limited to computer related attacks, hacking, war, sanctions, riots, any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or acts of terrorism, the Party so affected shall be excused from such performance and liability to the extent of such prevention or restriction. In the event that a third-party vendor of Ping Identity, such as a hosting provider, terminates or suspends its services to Ping Identity, or such services are otherwise materially impacted outside of Ping Identity's reasonable control, Ping Identity may suspend its provision of the Services to Customer for the duration of such occurrence. In such event, Ping Identity will promptly use commercially reasonable efforts to establish alternate facilities and/or services, as a replacement.

**11.16 Anti-Bribery.** Ping Identity agrees not to provide, and Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Ping Identity employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either Party learns of any violation of the above restriction, such Party will use reasonable efforts to promptly notify the other Party.

**11.17 Headings, Advice of Counsel, and Drafting.** Headings used in this Agreement are provided for convenience only and will not in any way affect the meaning or interpretation of each section. The Parties acknowledge that they have been advised by counsel of their own choosing, or had the opportunity to seek such counsel, and that its terms will be interpreted without any bias against one Party as drafter.

**11.18 Entire Agreement.** This Agreement, including all exhibits hereto, and all Order Forms (which are incorporated herein by reference), constitutes the final agreement between the Parties. All prior agreements (including any click-through agreement associated with the Products), promises, assurances, understandings, proposals or representations, written or oral, concerning the subject matter contained in this Agreement, are expressly superseded by this Agreement. Each Order Form that is executed by Customer incorporates the terms of this Agreement in effect as of such date of execution. Any prior or contemporaneous non-disclosure, confidentiality, or similar agreement between the Parties is expressly superseded by this Agreement and the confidential or proprietary information previously disclosed thereunder shall become "Confidential Information" under the terms of this Agreement as if originally disclosed hereunder. In entering this Agreement, neither Party has relied upon any statement, promise, assurance, understanding, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions are specifically and expressly rejected by Ping Identity and shall be null and void. The U.N. Convention on the International Sale of Goods shall not apply to this Agreement.

**11.19 Modifications, Amendments and Waivers.** This Agreement may not be modified except by written instrument signed by both Parties. Notwithstanding the foregoing sentence, Ping Identity may amend any terms located at URLs from time to time by posting such amendment(s) at the URLs listed herein, or alternate URLs as may be provided to Customer by Ping Identity from time to time. Customer acknowledges and agrees that Customer's continued use of the Products after the posting of such an amendment shall constitute Customer's consent to such amendment and agreement to be bound by the same. In the event that Ping Identity modifies the contents of such URLs during the term of this Agreement in a manner that is materially adverse to Customer, Customer may terminate this Agreement upon written notice to Ping Identity and receive a refund of any prepaid, unused Fees under any outstanding Order Form(s) at the time of such termination unless Ping Identity notifies Customer within five (5) business days of such notice that Customer may remain under the version of the applicable terms prior to such amendment.

**11.20 Counterparts.** Any Order Forms may be executed by PDF or other electronic means, and in one or more counterparts, which taken together shall form one legal instrument.

## 12 Definitions.

"**Affiliate(s)**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Confidential Information**" means all confidential and proprietary information of a Party (the "**Disclosing Party**") disclosed or made available to the other Party (the "**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure, including without limitation, the terms and conditions of this Agreement, the Products, the Customer Data, business and marketing plans, technology and technical information, pricing information, financial results and information, product designs, product roadmaps, results of penetration testing, security reports or audits and business processes.

"**Customer Data**" means all electronic data or information provided to the Service in connection with Customer's and its Users' use of the Service. Customer Data may include Personal Data.

"**Documentation**" means Ping Identity's then current on-line administrator user's manuals for the Products made generally available by Ping Identity on its website.

"**Malicious Code**" means viruses, worms, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Order Form**" means any ordering document, including any product specific terms, supplements, or addenda thereto, for Customer's purchases from Ping Identity that is executed by both Parties.

**“Personal Data”** has the meaning assigned to it in the DPA.

**“Products”** means the Software and Service.

**“Professional Services”** means any administration, training, installation, health check, or similar professional services purchased by Customer as set forth in an Order Form and/or SOW.

**“Reseller”** means an authorized reseller of Ping Identity.

**“Service”** means hosted, software-as-a-service offerings provided by Ping Identity that are identified on an Order Form or otherwise made available to Customer.

**“Software”** means the downloadable software programs offered by Ping Identity that are identified on an Order Form or otherwise downloaded or installed by Customer, including in connection with its use of the Service.

**“SOW”** shall mean a written document attached to an Order Form that describes the Professional Services to be performed to be completed.

**“Users”** means any administrator of Customer and individuals (including non-human devices) who are provisioned by Customer (or Customer’s authorized third parties accessing Customer’s services) to utilize the Products, or with whom Customer utilizes the Products, in connection with Customer’s use of the Products. Order Forms define the specific number and type of Users that Customer is authorized to permit to utilize the Products.