



## End User License Agreement

This End User License Agreement (“EULA”) and Open Source Supplemental License Terms (collectively referred to as the “Software Terms”) and/or any other Forward Networks, Inc. (“Forward Networks”) Maintenance and Support terms, govern the license and use of Forward Networks’ Software (the “Software”). *If you do not accept the terms of this EULA, do not install, use or access the Software.*

EXECUTING A WRITTEN ORDER FOR FORWARD NETWORKS SOFTWARE AND/OR FORWARD NETWORKS’ MAINTENANCE AND SUPPORT TERMS CONSTITUTES ACCEPTANCE OF THESE SOFTWARE TERMS. IF END USER DOES NOT ACCEPT THESE SOFTWARE TERMS OR DID NOT PURCHASE OR ACQUIRE THIS LICENSE FOR SOFTWARE OR MAINTENANCE AND SUPPORT SERVICES (OR OTHER SERVICES) FROM FORWARD NETWORKS OR A RESELLER OR DISTRIBUTOR AUTHORIZED AND APPROVED BY FORWARD NETWORKS, END USER HAS NO LICENSE OR RIGHT TO USE THE SOFTWARE AND THE LIMITED WARRANTY AND INDEMNIFICATION PROVISIONS UNDER THESE SOFTWARE TERMS DO NOT APPLY.

**Scope of Agreement.** These Software Terms apply to Software, and any associated Maintenance and Support services purchased from Forward Networks or its authorized distributors or resellers.

**Supplemental License Terms.** The Open Source Supplemental License Terms sets forth provisions applicable to the Forward Networks Software licensed by End User.

### Definitions.

“End User” or “Customer” refers to the entity or person(s) downloading, accessing, or using the Software as provided under the Software Terms. “Forward Networks Software” refers to Software, Support, Services, and documentation.

“Hypervisor” means proprietary or open source software provided by a third party that allows one or more Virtual Machines to run concurrently on a host server.

“Network Data” means Software-collected Node data to enable Software features and functionality.

“Node” means a Customer physical device or virtualized instance that is accessed by the Software’s data collector in order to gather configuration and state information, as set forth in Software documentation. The Software is licensed per Node.

“Separately Licensed Third-Party Software” means third party technology that is licensed under Separate Terms and not under the terms of this EULA.

“Separate Terms” means separate license terms that are specified in the Software documentation, read me or notice files and that apply to Separately Licensed Third Party Software.

“Software” or “Solution” refers to the software, Source Code and documentation, including but not limited to Patches, bug fixes and derivatives thereof (if any) provided under these Software Terms.

“Source Code” means the literal computer code of the Software and any material beyond the literal code itself that facilitates or expedites the review and understanding of the Software.

“Subscription Term” refers to a license that is limited for a specific time period as noted in the purchase documentation.

“Usage” refers to a license that is based on End User’s actual or metered use of the Software as noted in the applicable purchase documentation.

“Virtual Machine” means a software based implementation that emulates the computer architecture and functions of a real world computer.

### 1. License Grant and Restrictions.

1.1 Subject to the provisions of these Software Terms , the Supplemental License Terms and payment of all applicable license fees, Forward Networks grants End User a limited, non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable license to use the Software only in object code form for the period of time specified in End User's purchase documentation, for End User's own internal purposes only. This license shall also be subject to any applicable limitations and restrictions under End User's agreement with the distributor or reseller, and if there is a conflict between these Software Terms and the terms of such other agreement(s), the terms that are more protective of Forward Networks will be controlling. Software must be used only in accordance with the applicable documentation or the Software provided by Forward Networks. End User may only use the Software in a manner for which End User has purchased or obtained a valid license. In order to download, access or use the Forward Networks Software, End User may be required to obtain, use and register a license key and provide additional information as requested by Forward Networks.

1.2 Trial Licenses. The license(s) granted herein excludes licenses obtained for trial or evaluation purposes. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, FORWARD NETWORKS WILL HAVE NO WARRANTY OR SUPPORT OBLIGATIONS WITH RESPECT TO TRIAL OR EVALUATION LICENSES.

1.3 License Restrictions. All Software delivered hereunder is licensed, not sold. Except as expressly provided in these Software Terms, End User may not itself, or through any parent, subsidiary, affiliate, agent, or other third party, nor permit third parties to:

a) Modify, translate, adapt, change, enhance or create derivative works based upon the Software, including, without limitation, using the Software for the development of other software or applications;

b) Copy, or otherwise reproduce the Software in whole or in part;

c) Decompile, translate, reverse engineer, disassemble, attempt to discover any source code or underlying ideas or algorithms, structure, architecture or algorithms of the Software (except to the extent that applicable law or any public license prohibits reverse engineering restrictions), or otherwise reduce the Software to human-readable form;

d) Remove, modify or otherwise tamper with any proprietary rights notices or other notices or legends contained on or in the Software;

e) Use, license, sell, transfer, or any way distribute or sublicense the Software that is outside the scope of the licenses granted herein;

f) Provide, lease, lend, use, disclose, divulge or make available to third parties, or otherwise use the Software in a timesharing or

service bureau environment;

g) Take any action that would cause the Software or any proprietary portion thereof to become part of the public domain; or

h) Use the Software in any manner not expressly permitted hereunder.

i) Extract or run any component of the Software Independently;

j) Utilize the Software or portion thereof to pass Network Data in Customer's network with a trial, unpaid or unlicensed version of the Software; or

k) Publicly disseminate performance information or analysis about the Software including benchmarking test results.

1.4 Separately Licensed Third-Party Software. The Software may contain or require the use of Separately Licensed Third-Party Software that may be, but not necessarily is, provided with the Software. Forward Networks may provide notices to Customer in Software documentation, or read me or notice files in connection with such Separately Licensed Third-Party Software. Separately Licensed Third-Party Software Third party technology will be licensed to Customer under Separate Terms. Forward Networks disclaims all liability and warranties with respect to Separately Licensed Third-Party Software.

1.5 License Granted to Forward Networks. Customer acknowledges and agrees that the Software may access third party Node software in order to collect Network Data, and that such access may be in violation of third party terms and/or conditions to which

Customer is bound. As between Forward Networks and Customer, such access, and the consequences thereof, is solely Customer's responsibility, and Forward Networks has neither any obligation nor ability to verify what, if any, third party agreements to which Customer is bound, nor will Forward Networks have any responsibility, whether legal, financial, or otherwise, arising out of or relating to the foregoing.

1.6 Network Data. To provide the basic Software functionality, the Software requires the collection of Network Data. The Software does not collect any personal data, and no Customer network traffic is collected by or routed to the hosted cloud component of the Software. Forward Networks may use Network Data to provide the Software functionality and Software Support Services to Customer and for the general purpose of improving the Software and other Forward Networks offerings. Without limiting the generality of the foregoing, Forward Networks may (a) compile statistical and other information related to the performance, operation and use of the Software, and (b) use data from the Software usage in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Forward Networks may make Service Analyses publicly available; however, Service Analyses will not be presented in a form that could serve to identify Customer or any individual. Forward Networks retains all intellectual property rights in Service Analyses.

1.7 Tran-Border use of Software. Customer acknowledges that the Software is designed with capabilities for Customer and its authorized users to access the Software (under some delivery models) without regard to geographic location and to transfer or otherwise move Customer data between the Software and other locations such as Nodes. Customer is solely responsible for the authorization and management of user accounts across geographic locations, as well as export control and geographic transfer of Customer data.

1.8 License Co-Termination; Segmentation. To the extent that Customer purchases Software license subscription(s), the duration of each Subscription Term previously purchased will be adjusted such that all of the Subscription Terms terminate on the same date using a weighted average model. Without limiting the generality of the foregoing, the purchase of any Software licenses and/or service offerings are all separate offers and separate from any other order for any Software and/or service offerings that Customer may receive from Forward Networks, whether directly or indirectly. Customer's obligation to pay for any Software and/or service offerings is not contingent on the delivery or performance of any other Software or services.

1.9 Limitations. End User's rights in the Software are limited to those expressly granted herein. End User may not extract or run any component of the Software independently. Further, End User may not utilize any Software or portion thereof to pass traffic in a network with an unpaid or unlicensed version including but not limited to evaluation or open source versions of the Software. All the limitations and restrictions on the Software in these Software Terms also apply to documentation.

1.10 Open-Source Software. The Forward Networks Software may include public licenses (including the Apache License 2.0, The New BSD License, Mozilla Public License, MIT License, GNU LGPL 2.1 and other public licenses (each a "Public License"). End User's rights and obligations with respect to such Software are set forth in the applicable Public License and these Software Terms. Information about applicable Public Licenses may be found in the electronic media or content downloaded with the Software. Otherwise, to obtain a copy of the applicable licensing provisions for the open source software used by Forward Networks, please refer to support@forwardnetworks.com. User either must agree to the provision of each applicable Public License or not exercise such licensed rights. These Software Terms are not intended to change or restrict the terms of any Public License, and Forward Networks does not seek to restrict, or receive compensation for, the copying or redistribution of publicly licensed code that is otherwise freely re-distributable to third parties (and not otherwise restricted by federal copyright or other laws). Forward Networks disclaims all liability and warranties with respect to Software subject to a Public License.

## **2. Support & Services**

2.1 Support. If the Forward Networks Software includes Maintenance and Support and requires registration or activation, End User is responsible for registering or activating Maintenance and Support for the Software in Exhibit A designated by Forward Networks. Forward Networks' obligation to provide Maintenance and Support is conditioned upon such registration or activation, receipt of all amounts due and payable for the Forward Networks Software, and End User's compliance with the provisions applicable to the Forward Networks Software. If End User reports an issue to Forward Networks related to the Support for the Software ("Service Request"), End User will classify the Service Request according to severity levels. Forward Networks is not obligated to provide assistance regarding any issue if Forward Networks determines that the cause of the Service Request was not related to the Software or the request is not covered by Forward Networks' Support or Service obligations. Forward Networks retains all rights, title and interest in and to any patents (issued, non-issued, or pending), copyrights, trade secrets, work product and other intellectual property resulting from performance of Support and Services.

2.2 Exclusions. Maintenance and Support and Services do not cover and Forward Networks disclaims any responsibility for Service Requests arising out of alterations of or modifications to the Software performed by any party other than Forward

Networks, accident, negligence, improper installation, misapplication, abuse, alteration or misuse of the Software or End User's failure to use the Software in accordance with the provisions of this Agreement or the documentation and instructions provided by Forward Networks. Additional charges may apply if Forward Networks determines that the cause of the Service Request was not related to the Software or the request is not covered by Forward Networks' obligations. Support does not cover and Forward Networks disclaims any responsibility for support requests related to publicly available software including, but not limited to, open source software.

### 3. WARRANTY.

**3.1 Authority; No Conflict.** Each Party warrants to the other party that: (a) it has the full corporate right, power and authority to enter into this Agreement and perform its obligations hereunder; and (b) when agreed upon in writing or by electronic acceptance of the terms and delivery of the Software, this Agreement will constitute a legal, valid and binding obligation enforceable against it in accordance with its terms. Each party warrants to the other that its entry into and performance under this Agreement will not conflict with or result in a breach or violation of any of the terms or provisions, or constitute a default under, any other agreement by which it is bound.

**3.2 Solution.** Forward Networks warrants to End User that for a period of thirty (30) days from delivery, the initial Solution provided hereunder, as made available to End User and when used as permitted hereunder, will perform substantially in accordance with the Documentation. If during this period, End User notifies Forward Networks of a non-conformity, Forward Networks will, at its own expense and as its sole obligation and End User's exclusive remedy (a) examine the Solution for such non-conformity, and if the non-conformity is reproducible, (b) use commercially reasonable efforts to correct the non-conformity or provide a work-around within ten (10) days of notice of non-conformity, or, if Forward Networks is unable to do so, refund to End User a pro rata portion of the subscription fees actually paid for the non-conforming item of the Solution, prorated to the end of the initial Subscription Term. In the event of a refund remedy, End User's Licenses and right to receive the Solution and all affected Services will end. Forward Networks uses commercially reasonable efforts to ensure that the Solution and any media upon which any of the foregoing is delivered, will not contain any virus, trap door, worm or any other device that is injurious or damaging to any hardware or software, or End User systems. THIS SECTION 3.2 STATES FORWARD NETWORKS' ENTIRE LIABILITY AND CUSTOMER'S SOLE REMEDY FOR ANY NON-CONFORMITY OR OTHER PERFORMANCE MALFUNCTION IN THE SOLUTION.

**3.3 Certain Exclusions and Limitations.** Forward Networks does not warrant that the Solution, Services or any deliverable will be error-free, uninterrupted or meet End User's specific requirements or that performance of the Services will be uninterrupted, or that the Solution, Services or deliverables are error free and all deficiencies or defects will be corrected. Forward Networks will have no warranty obligation under this Section 3 if End User uses the Solution or any deliverable other than in an environment intended or recommended by Forward Networks, or for abuse, misuse, accident or neglect, or for failure to use the Solution or any deliverable in accordance with its Documentation and this Agreement. Provision of a correction will not extend the original warranty period. Forward Networks disclaims liability for End User's non-compliance with laws and regulations applicable to it in the use of the Solution, performance under this Agreement, or conduct of its business.

**3.4 Software Warranty.** For thirty (30) days following the date on which the initial Software is first made available to Customer hereunder (the "Software Warranty Period"), Forward Networks warrants to Customer that the Software as made available to Customer and when used as permitted hereunder, will perform substantially in accordance with the Software documentation. Forward Networks does not warrant that Customer's use of the Software will be error-free or uninterrupted. Forward Networks will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty reported to Forward Networks during the Software Warranty Period, use commercially reasonable efforts to correct any reproducible error in the Software reported to Forward Networks by Customer in writing during the Software Warranty Period or, if Forward Networks determines that it is unable to correct the error, Forward Networks will refund to Customer all license fees paid for the nonconforming Software, in which case this EULA and Customer's right to use the Software will be terminated. Any error correction provided to Customer will not extend the Software Warranty Period. Forward Networks will not be obligated to resolve any nonconformity or defect in the Software caused by any Software misuse or modification of the Software by any party other than Forward Networks, or breach by Customer (or its agents) of the terms of this EULA.

**3.5 Virus.** Forward Networks will use commercially reasonable efforts in screening the Software and the media on which the Software are furnished to Customer before delivery, to reduce the possibility of the existence of a Virus. If Forward Networks performs such screening, but Customer is able to demonstrate that the Software supplied by Forward Networks are the source of a Virus introduced into Customer's computing environment, Forward Networks' sole obligation will be to deliver a new copy or copies of the Software free of the identified Virus, at no charge to Customer. Customer acknowledges that not all Viruses can be detected by such programs and, therefore, Forward Networks does not represent or warrant that such Software or media will be free of Viruses. Customer understands and acknowledges that the Software may contain technological measures designed to limit functionality of the Software prior to activation, to authorize or authenticate the validity of the Software, or to prevent the illegal or unauthorized usage of the Software or usage of the Software that violates the terms and conditions of this EULA. Such

measures may include a means for Forward Networks to access the Software to validate its authorized use or enable some or all of functionality of the Software prior to use or the transmission to Forward Networks of information regarding usage of the Software for the sole purpose of verifying compliance with this EULA. Customer hereby consents to the transmission of such information to Forward Networks and agrees not to circumvent or attempt to circumvent such measures.

**3.6 WARRANTY DISCLAIMER.** EXCEPT AS PROVIDED IN THIS SECTION 3, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOLUTION, DOCUMENTATION, SERVICES AND ANY DELIVERABLES ARE PROVIDED “AS IS” AND FORWARD NETWORKS AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT THERETO, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OR TRADE. FORWARD NETWORKS DOES NOT WARRANT FREEDOM FROM ERRORS, OR THAT ERRORS IN THE SOLUTION WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY AND EXPRESSLY SET FORTH HEREIN. CUSTOMER ACKNOWLEDGES AND AGREES THAT FORWARD NETWORKS’ SUPPLIERS AND LICENSORS ARE THIRD PARTY BENEFICIARIES OF THIS SECTION 3.6.

#### **4. Indemnification.**

**4.1 By Forward Networks.** Forward Networks will have the right to intervene to defend any action against End User brought by a third party to the extent the action is based on a claim that the Solution or Documentation directly infringes that third party’s United States patent or copyright or misappropriates such third party’s trade secret (a “Claim”). Forward Networks agrees to pay all damages and costs (including reasonable attorney’s fees) finally awarded against End User by a court of competent jurisdiction that are specifically attributable to the Claim, or those costs and damages agreed to by Forward Networks in a monetary settlement of the Claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If, in connection with a Claim, the Solution is adjudged to infringe and its use is enjoined by a court of competent jurisdiction, or if Forward Networks reasonably believes that the Solution is or may become the subject of a Claim, then Forward Networks will, at its own expense and at its option: (i) modify the Solution to render it non-infringing while maintaining substantial functional equivalence; (ii) procure for End User the right to continue to use the Solution as permitted under this Agreement; (iii) replace the Solution with a non-infringing product of substantially equivalent function; or (iv) accept return of the Solution and notwithstanding any other provision of this Agreement, terminate the License for the Solution and refund to End User a portion of the Subscription Fee paid for the Solution, prorated to the end of the then-current Subscription Term. Notwithstanding the foregoing, Forward Networks has no obligation under this Section 4.1 or otherwise with respect to any claim based upon: (a) use of the Solution in combination with other products, processes, equipment, data or materials not provided by Forward Networks, if such combination is the cause of the claim; (b) use of any version or release of the Solution other than the most current version or release made available by Forward Networks, if its use would have avoided the infringement; (c) use, reproduction, or distribution of the Solution not in accordance with this Agreement or the Documentation; and (d) any modification of the Solution that is not made by Forward Networks.

**4.2 Conditions.** The obligations under Section 4.1 are conditioned on the End User: (a) giving Forward Networks prompt written notice of the relevant claim; (b) reasonably cooperating with Forward Networks, at Forward Networks’ expense, in the defense of the claim; and (c) giving Forward Networks sole control of the defense and settlement of the claim, provided that any settlement must include a waiver of all claims against End User. Subject to and without limiting the foregoing, End User may participate in the defense at its expense (not subject to reimbursement).

**4.3 THE FOREGOING STATES FORWARD NETWORKS’ ENTIRE LIABILITY, AND END USER’S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.**

**4.4 Reserved.**

**5. Proprietary Rights.** Forward Networks and each of its third party suppliers own and retain for itself all right, title and interest in and to all designs, engineering details, data, materials, discoveries, inventions, patents and other proprietary rights pertaining to or reflected by the Forward Networks Software.

**6. Confidential Information.**

6.1 Confidentiality. Confidential Information means any information disclosed by one party to the other, either directly or indirectly, in writing, orally or by inspection of tangible objects, proprietary information, technical data, trade secrets (other than the Source Code) or know-how (including, without limitation, research, product plans, products, services, customers, markets, works of original authorship, photographs, negatives, digital images, software, computer programs, know-how, ideas, inventions (whether or not patentable), processes, formula, technology, designs, drawings, engineering, hardware configuration information, marketing or finance documents and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which is designated as "Confidential," "Proprietary" or some similar designation or which the receiving party knows or has reason to know is regarded as confidential by the disclosing party ("Confidential Information"). Receiving party will at all times keep in confidence all such Confidential Information, and shall not use such Confidential Information without disclosing party's written consent except in performance of its duties hereunder. Receiving party may not disclose the Confidential Information to any person except its employees to whom it is necessary to disclose the Confidential Information for permissible internal business purposes and who have agreed to receive it under terms at least as restrictive as those specified in the Software Terms. Receiving party's obligation to protect Confidential Information is satisfied if it utilizes the same control over the Confidential Information as it employs to avoid disclosure of its own confidential and valuable information (but no less than commercially reasonable control). Receiving party will immediately give notice to disclosing party of any unauthorized use or disclosure of the Confidential Information. Receiving party agrees to assist disclosing party in remedying such unauthorized use or disclosure of the Confidential Information. The foregoing obligations will not apply to the extent receiving party can demonstrate:

- . a) The disclosed Confidential Information was part of the public domain at the time of disclosure;
- . b) by written evidence that the disclosed Confidential Information was in the possession of the receiving party at the time of its disclosure by disclosing party;
- . c) receiving party received the disclosed Confidential information from a third party without similar restrictions on disclosure; or
- . d) receiving party is required to disclose the Confidential Information to a government agency, or in the event a proper court of competent jurisdiction orders its disclosure; provided, however, that receiving party will use its best efforts to minimize the disclosure of such Confidential information and will consult with and assist disclosing party in obtaining a protective order prior to such disclosure. Forward Networks recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released.

6.2 Retention Rights. Forward Networks may use any general learning, skills, or know-how or any information retained in the unaided memory of a person who had access to the End User's Confidential Information for any purpose. Forward Networks is free to develop products independently. Forward Networks may use any technical information it derives from providing the Support relating to Service Request resolution, troubleshooting, functionality enhancements and fixes. In the event of an unauthorized use, distribution or disclosure of any Confidential Information, the parties agree that the harmed party will not have an adequate remedy at law. Therefore, injunctive or other equitable relief may be appropriate to restrain such use, distribution or disclosure, whether threatened or actual. To the extent that Forward Networks provides End User serial numbers, access codes, entitlement numbers or the license to access Software Services, or Support, End User is responsible for the security and use of such information, including that contained in the documentation therefore. If End User believes any Forward Networks Confidential Information has been lost, stolen, or misused, End User must immediately notify Forward Networks.

## 7. Export Controls

End User acknowledges that the Forward Networks Software provided under these Software Terms are subject to the provisions of the U.S. Export Administration Regulations and may be subject to export and import regulations in countries outside the U.S., and agrees to comply with all such applicable laws and regulations, as required. End User acknowledges and agrees that it will not import, export, re-export, transfer or use, directly or indirectly, the Forward Networks Software in violation of the laws and regulations of any applicable jurisdiction. This restriction expressly includes, but is not limited to, the export regulations of the United States, and the import and export restrictions of any country in which End User transacts business. End User also agrees that it will not itself, nor allow any third parties to export, import,

transfer, use or re-export the Forward Networks Software, directly or indirectly (i) to any U.S. embargoed country; (ii) to any person or entity on a denial list published by the U.S. Government; or (iii) for any end use that is prohibited by United States or other applicable law, including nuclear, missile, chemical biological weaponry or other weapons of mass destruction. End User acknowledges that certain Software or technologies may be classified as "restricted encryption" items under section

740.17(b)(2) of the U.S. Export Administration Regulations and may require export licenses or U.S. re-export approval when being shipped from the U.S. or other countries.

## **8. LIMITATION OF LIABILITY.**

EXCEPT FOR BREACH OF CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS ("EXCLUDED CLAIMS"), IN NO EVENT WILL FORWARD NETWORKS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND. IN ADDITION, IN NO EVENT WILL FORWARD NETWORKS BE LIABLE FOR LOSS OF PROFITS OR REVENUE, LOST BUSINESS, AND LOST OR CORRUPT DATA OR GOODWILL ARISING OUT OF OR RELATED TO THESE SOFTWARE TERMS HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. THESE LIMITATIONS APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FORWARD NETWORKS' ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THESE SOFTWARE TERMS SHALL BE LIMITED TO THE AMOUNTS PAID TO FORWARD NETWORKS FOR THE SOFTWARE IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATIONS SHALL NOT APPLY ONLY TO THE EXTENT THAT SUCH CONTRACTUAL LIMITATIONS ARE PROHIBITED UNDER APPLICABLE LAWS. FOR PURPOSES OF THE EXCLUDED CLAIMS, THE TOTAL RESPECTIVE AGGREGATE LIABILITY OF FORWARD NETWORKS UNDER THIS AGREEMENT (IN THE AGGREGATE ACROSS ALL PERSONS AND ENTITIES AND TO ALL PARTIES AND PARTICIPATING AFFILIATES) SHALL NOT EXCEED 3 TIMES THE FEES PAID BY END USER IN THE 12 PRECEDING MONTHS UNDER THE AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## **9. Term and Termination.**

9.1 Term and Termination. The term applicable for the license(s) granted for the Forward Networks Software and any associated Maintenance and Support begins on the date End User first purchases, accesses, downloads, installs, or uses (whichever occurs first) the Software ("Initial Access") and continues through the Term purchased and as stated on End User's purchase documentation.

9.2 Termination for Cause. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Forward Networks shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. In the event that Customer terminates this EULA or a Software license subscription for cause, Forward Networks will refund to Customer the unearned pro-rata amount of fees paid for the applicable Software license subscription(s) to the end of the Subscription Term.

9.3 Effect of Termination and Survival. Notwithstanding any other obligation hereunder, upon any termination or expiration of these Software Terms, End User shall return to Forward Networks each and every copy of the Software and the corresponding software keys or certify their destruction in writing, and End User shall not retain any copies of any Forward Networks Confidential Information or Software. The following Sections shall survive termination or expiration of this Agreement: Section 1.3 License Restrictions; Section 3. WARRANTY; Section 4. Indemnification.; Section 5. Proprietary Rights; Section 6. Confidential Information; Section 7. Export Controls; Section 8. Limitation Of Liability; and Section 10 Miscellaneous.

## **10. Miscellaneous.**

10.1 Law; Disputes. This Agreement will be governed by and construed in accordance with the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement.

10.2 Severability. If any term or other provision of these Software Terms is determined by a non-appealable decision of a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of these Software Terms shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any provision is invalid, illegal or incapable of being enforced, that provision shall be severed from these Software Terms and there shall be deemed to be substituted a similar term or provision to accomplish the intent of the parties as closely as possible to the original term or provision, as determined by any court or arbitrator having jurisdiction, to the extent permitted by applicable law; provided, however, that if any restriction or limitation set forth in any license granted hereunder is deemed invalid or unenforceable, the entire license shall terminate.

10.3 Force Majeure. Excusable delays shall be governed by GSA Schedule Contract Clause 552.212-4(f).

10.4 Independent Contractors. The relationship between the parties established by these Software Terms is that of independent contractors, and nothing in these Software Terms shall be construed to create a relationship of agency or partnership between the parties or to allow either party to create or assume any obligation on behalf of the other party.

10.5 Subcontractors. Forward Networks may delegate its duties to subsidiaries or engage subcontractors to perform certain of its obligations under these Software Terms.

10.6 Compliance with Statutes and Regulations. Each party will comply with all applicable Federal, state, local and foreign statutes, rules, regulations and orders, including but not limited to the Foreign Corrupt Practices Act.

10.7 Nuclear, Aviation or Life Support Application. Forward Networks specifically disclaims liability for use of the Forward Networks Software in connection with the design, construction, maintenance and/or operation of any (i) nuclear facility, (ii) aircraft, aircraft communication or aircraft ground support system, or (iii) safety or health care control system, including without limitation, life support system.

10.8 U.S. Government Restricted Rights. The Software and any accompanying documentation provided under the Software Terms incorporate commercial computer software and commercial computer software documentation developed exclusively at private expense, and is in all respects proprietary property belonging solely to Forward Networks or its suppliers. If End User is acquiring the Software on behalf of any part of the United States Government, the following provisions apply. The object code and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to FAR 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the object code and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of these Software Terms and shall be prohibited except to the extent expressly permitted by the provision of these Software Terms. Any technical data provided that is not covered by the above provisions is deemed to be "technical data" and "commercial items" pursuant to DFAR Section 252.227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 252.227.7015(b).

10.9 Excluded Data. The Software provided under these Software Terms is not designed to offer functionality providing security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) other personally identifiable information that is subject to heightened security requirements as a result of End User's internal policies or practices or by law or regulation ("Excluded Data"). End User agrees that End User is solely responsible for reviewing and ensuring that any data it provides to Forward Networks (or to which Forward Networks will have access) does not contain Excluded Data.

10.10 Audit & Retention of Records. Forward Networks shall have the right to audit and inspect End User's usage of the Software and to verify End User's compliance with the provisions of these Software Terms (including all payment terms, if any) during End User's normal business hours, upon 10 days notice to the End User, and no more than once in any twelve (12) month period. End User shall promptly remedy any underpayments that are discovered. End User shall retain the applicable records pertaining to its performance obligations for two (2) years after the termination or completion of such obligation.

10.11 Notices. All notices under these Software Terms shall be in writing and shall be delivered by personal delivery, internationally recognized overnight carrier, or facsimile transmission, and shall be deemed given upon personal delivery, three (3) business days after delivery to the international carrier with proof of receipt, or by email, or fax (if applicable) upon acknowledgment of receipt of electronic transmission. Notices to Forward Networks shall be sent to Forward Networks, Inc., [legal@forwardnetworks.com](mailto:legal@forwardnetworks.com) and to End User at the email of End User business owner.

10.12 Assignment. Neither party shall not, directly or indirectly, in whole or in part, whether by operation of law or otherwise, assign or transfer these Software Terms and any attempted assignment, transfer or delegation without such prior written consent of the other party. Without limiting the foregoing, these Software Terms will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

10.13 Remedies Cumulative. Except as otherwise set forth herein, all rights and remedies existing under these Software Terms are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.14 Waiver; Amendment. Failure or delay on the part of either party hereto in the exercise of any right hereunder shall not impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any



single or partial exercise of any such right preclude other or further exercise thereof or of any other right. No change or amendment will be made to these Software Terms except by an instrument in writing signed on behalf of each of the parties to such agreement.

10.15 No Implied Licenses. Nothing contained in these Software Terms shall be construed as conferring any rights by implication, estoppel or otherwise, under any intellectual property right, other than the rights expressly granted in these Software Terms.

10.16 Translations; Order of Precedence. These terms are in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties. All communications and notices to be made or given pursuant to these Software Terms, and any dispute proceeding related to or arising hereunder, shall be in the English language. In the event of any discrepancy or inconsistency between different language versions of these Software Terms (and all associated documents or correspondence concerning these Software Terms), the English language version shall prevail. If any of the provisions of these Software Terms conflict or are otherwise inconsistent with the terms of a purchase order or other terms provided to Forward Networks, the provisions of these Software Terms will apply.

10.17 Entire Agreement. These Software Terms constitutes the entire agreement between the parties with respect to the subject matter and shall supersede all prior written and oral agreements and understandings between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this EULA as of the Date last set forth below.

**Forward Networks, Inc.**

**End User**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Exhibit A

### SUPPORT SERVICES

This Forward Networks Support Services Policy describes the policies and procedures under which Forward Networks, Inc. ("Forward Networks" or "we/us/our") provides support services ("Support Services") to its customers (each, a "Customer" or "you/your"). Support Services are provided for Forward Networks' Service pursuant to this policy and the End User License Agreement (the "Agreement") between Forward Networks and Customer. Support Services are provided for the Subscription Term specified in the Order Form. Forward Networks may change the Support Services offered at any time, effective as of the commencement of any Subscription Term. Capitalized terms not otherwise defined in this policy have the meanings given in the Agreement.

Forward Networks is committed to delivering a quality service experience to our Customers. As part of our commitment, it is our goal to improve the Service by effectively managing and quickly resolving the technical inquiries of our Customers. The purpose of this document is to communicate the support options and processes and clearly set service expectations.

#### Support Services Overview

Forward Networks currently offers a single, inclusive level of technical support. This offering is known as Standard Support, which is defined below. This offering is included with all Forward Networks Service subscriptions and terminates upon expiry of the applicable Subscription Term. Additional Premium Support services may be purchased for a fee as outlined below.

#### New Device - Maintenance and Support

Forward Networks agrees to work with End User to roadmap new devices to be supported under the Forward Networks Enterprise Software Platform; however, Forward Networks will not guarantee support for all device requests. Standard device modeling and support requires approximately ninety (90) days from the receipt of a new device by Forward Networks. Forward Networks will provide End User with the option to commission device support acceleration services for an additional fee.

#### Standard Support

This level of support provides access to our highly technical support organization via the Forward Networks Customer Success Center (also known as "CSC"). The CSC is accessed via the help & support link while logged into the Forward Networks Dashboard or via telephone. The Customer Success Center provides access to technical support, development and product management personnel from inside Forward Networks. The CSC is the point of access for self-service technical support.

Forward Networks' service hours are from 9am to 5pm, Pacific Time, Monday to Friday, excluding U.S. public holidays. Target response times are indicated according to the priority level of reported problems indicated in the priority and target response time matrix below.

#### Forward Networks Customer Success Resources

The Forward Networks customer success organization consists of seasoned technical professionals dedicated to bringing Customers optimum value from the Forward Networks Service. During a support request, you may interact with Forward Networks representatives operating in one or more of these roles:

Customer Success Team – This is Customer's primary point of contact with Forward Networks for all technical support issues and handles the management of Customer's case inquiries through to case resolution. The customer success team consists of:

- *Customer Service Representatives.* Forward Networks Software experts who are able to answer questions regarding product use, service problems, data analysis, and more. CSRs will manage and resolve or escalate Customer's technical issues.
- *Customer Solutions Architect.* Forward Networks technology experts who provide basic to advanced technical support, and work with the Customer Service Representatives to investigate complex issues. CSAs will manage and resolve or escalate Customer's advanced technical issues.
- *Product Engineering Support ("ENG").* For product related support issues, if the prior layers of technical support are unable to resolve Customer's issue, the issue will be escalated to the Forward Networks product engineering support team, which includes product developers and engineers who form parts of the core technology team within Forward Networks.
- *Professional Services Consultant.* Available as a premium service offering, the professional services consultant assists in deploying, onboarding, customizing the Forward Platform, developing NQE checks, and integrating with other platforms as described in the statement of work

Forward Networks employs a team of experts who work in cross-functional roles. Representatives of Forward Networks may operate in one or more customer success roles during the course of resolution of Customer-reported issues.

**Contacting and Working with the Forward Networks Customer Success Team:**

Reporting a Problem. Customer may use one of the following methods to report a support issue:

- *Online* – at the CSC which is accessible through the help & support link when logged into the Dashboard.
- *Via Email* – send an email to [support@forwardnetworks.com](mailto:support@forwardnetworks.com), including the information requested below. Customer’s email will be routed to Forward Networks’ support system and the request will be assigned a case ID.
- *Via Telephone* – contact Forward Networks support team via phone at +1 (844) 393-6389.

In addition to online and email reports, Urgent (Priority 1) inquiries (indicative of a system outage) should also be reported by telephone to ensure the quickest response.

**Case Notification:**

Customer will receive an automated notification immediately following a case creation activity. The notification will include the case ID, a summary of the inquiry and the priority level that has been assigned. Case notification will always be done via email, to the email address of the Customer contact who created the case.

Initial contact from the representative handling Customer’s case will be made in accordance with the priority and target response time matrix below.

**Information Customer Provides to Forward Networks:**

If Customer is reporting a new issue, the following will be required:

1. Account name or the username that Customer uses to access the Forward Networks Dashboard. This information is automatically populated for Customers connecting to the Customer Success Center from the Forward Networks Dashboard.
2. The results of any troubleshooting measures that may have been already undertaken, and a list of steps that can be followed to reproduce the issue.
3. As many other details about the issue as possible, including any co-existing issues and any recent updates or changes that may have been made to the network topology or infrastructure. Details such as system logs, or device configuration and state may be required to investigate and resolve the issue.

For subsequent communications about existing cases, be prepared to provide:

1. Any previously assigned case IDs and priority level.
2. Any additional details about the issue since the last contact with the Forward Networks customer success resources.

**Priority and Response Target Matrix:**

During case creation, Customer will assign a priority level, based on the criteria described in the matrix below. Forward Networks will respond to Customer inquiries within specified targets based on the priority of the reported issue according to the matrix. If a response is needed to meet a deadline, Customer should indicate the target date/time in the case description. Forward Networks will expedite to such deadlines.

**Priority Level Criteria Target Response Times:**

Priority	Priority Level	Criteria	Response Targets
Priority 3	Low	A feature of the Service is not functioning correctly, but does not impact data quality or access. This includes requests for general information.	2 business days
Priority 2	Normal	Service exhibits one or more errors that cause some major features or functions to fail to conform to their documentation, without rendering such features or functions completely unusable. This includes scripting and implementation of API-related requests and single-user authentication problems.	8 business hours

Priority 1	High	Service exhibits one or more errors that cause it to lock up and completely fail to operate. Normal business cannot function. There is no workaround available.	4 business hours
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**Case Solution:**

A case will be closed when Customer's problem is resolved. A solution is typically one of the following: an answer to the question, a suggestion on how to perform a particular task which resolves the issue in the Customer environment, an acceptable workaround to a product issue, or a fix which resolves the issue in the Customer environment. Customer will be notified of case closures, and this closure notification will always be done via email, to the email address on record.

A case can be re-opened at any time at Customer's request if further investigation is required.

**Exclusions from Support:**

Support Services do not cover (and Forward Networks is not responsible for) issues arising from: (i) Customer's equipment, software, network connections or other infrastructure; (ii) use of the Service by Customer in a manner not consistent with the Documentation, (iii) modifications to the Forward Networks platform by any party other than Forward Networks, (iv) third party acts or systems or (v) general Internet problems, force majeure events (as described in the Agreement), or other factors outside of Forward Networks' reasonable control.