

## Subscription Agreement

This Subscription Agreement, as may be amended from time to time (this “**Agreement**”), is entered into and made effective as of the date of last signature below (the “**Effective Date**”) by and between **Ping Identity Corporation**, a Delaware corporation, having its principal place of business at 1001 17<sup>th</sup> Street, Suite 100, Denver, CO 80202 (“**Ping Identity**”) and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (“**Customer**”). Collectively, Ping Identity and Customer may be referred to as the “Parties” or in the singular as a “Party.”

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. Definitions.

“**Administrator**” is an individual who has been granted administrative permissions by Customer to the Service.

“**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.

“**Customer Data**” means all electronic data or information submitted by Customer and its Users to the Service.

“**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 for Customer’s purchases from Ping Identity that is executed by both Parties. Each Order Form is incorporated into the terms of this Agreement.

“**Products**” means the Software, Service, Trial Products (defined in Section 2.3) and Beta Versions (defined in Section 2.4).

“**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 Ping Identity programs identified on an Order Form or otherwise downloaded or installed by Customer.

“**Support Services**” means those maintenance and support services that Customer obtains from Ping Identity set forth in Section 2.7 below.

“**Users**” means any Administrator and (i) individuals who are provisioned by Customer to utilize the Service in connection with Customer’s use of the Service and/or (ii) entities authorized by Customer to transmit information through the Service to Customer in order to access Customer’s services, as well as any individuals associated with such entities. Order Forms define the specific number and type of Users that Customer is authorized to permit to utilize the Service.

### 2. General.

**2.1 Provision of Service.** Subject to the terms and conditions of this Agreement, Ping Identity shall make the Service available to Customer during the term specified in the applicable Order Form(s) so that Customer may utilize the Service, solely for Customer’s business use, all in accordance with this Agreement, the applicable Order Form(s) and the Documentation. 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.

**2.2 Software License Grant.** Subject to the terms and conditions of this Agreement, Ping Identity hereby grants Customer, during the 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.

**2.3 Evaluation and Developer Licenses.** If Ping Identity provides Customer with a trial, evaluation or developer license to the Products (the “**Trial Products**”), Customer agrees to use the Trial Products solely for evaluation purposes, in a non-production environment, for a thirty (30) day evaluation period unless a different period is otherwise agreed to in writing by Ping Identity (the

“**Trial Period**”). At the end of the Trial Period, Customer’s right to use the Trial Products automatically expires and Customer agrees to uninstall the Trial Products and return to Ping Identity all copies or partial copies of the Trial Products and, upon request, certify to Ping Identity in writing that all copies or partial copies of the Trial Products have been deleted from Customer’s computer libraries and/or storage devices and destroyed. If Customer desires to continue its use of the Trial Products beyond the Trial Period, Customer shall contact Ping Identity to acquire a license to, or subscription for, the Trial Products for the applicable fee.

**2.4 Beta Versions.** If Ping Identity and Customer mutually agree in writing, Customer may receive beta, preview or other pre-release Products or features from Ping Identity (“**Beta Versions**”). Beta Versions may not have been tested or debugged and are experimental, and any documentation may be in draft form. Ping Identity may change or discontinue Beta Versions at any time without notice.

**2.5** IN ADDITION TO ANY DISCLAIMERS IN SECTION 8.4, ANY TRIAL PRODUCTS AND BETA VERSIONS ARE PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS AT CUSTOMER’S SOLE RISK. PING IDENTITY SHALL NOT HAVE ANY LIABILITY FOR CUSTOMER’S USE OF THE TRIAL PRODUCTS OR BETA VERSIONS UNDER THIS AGREEMENT UNDER ANY THEORY OF LIABILITY. Ping Identity does not provide support for Trial Products or Beta Versions. Trial Products and Beta Versions may be subject to reduced or different security, compliance and privacy commitments. The following Sections of this Agreement shall not apply to Trial Products or Beta Versions: 2.7, 6.6, 6.7, 8.1, 8.2, 8.3, 9.1 and 10.1.

## **2.6 Delivery, Installation and Acceptance of the Software.**

**(a) Delivery, Installation and Acceptance 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.

**(b) Ping Identity Assistance.** In the event that Customer requires any administration, training, installation, health check, or similar services with respect to the Products, any such services and related Fees shall be set forth in an Order Form and such services shall be provided by Ping Identity without the need for a separate professional services agreement unless otherwise agreed to by the Parties.

**2.7 Support for Products.** Ping Identity will provide those Support Services for the Products in accordance with Ping Identity’s support agreement available at <https://www.pingidentity.com/support-policy> (the “**Support Policy**”), the current version of which is attached hereto as Exhibit A. Ping Identity is not obligated under the terms of this Agreement to provide any customer service or support to any User other than Administrators; such responsibility (if any) shall remain with Customer.

**2.8 Order Forms.** 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.

**2.9 Resellers.** In the event that Customer purchases subscriptions to the Products through an authorized reseller of Ping Identity (a “**Reseller**”), no Order Forms will be executed between Ping Identity and Customer. Ping Identity’s official ordering documentation with the Reseller will contain the details of the subscriptions to the Products (including the scope of permitted use, quantities of licenses, etc.), and references to Order Forms herein will refer to such documentation. Customer should obtain such details from the Reseller, but Ping Identity can also confirm to Customer any such details of the subscription other than amounts payable. Fees and Taxes (if any) will be payable to Reseller, and the billing and payment terms will be determined pursuant to Customer’s agreement(s) with Reseller in lieu of Section 4 hereof. Resellers have no authority to modify any of the terms of this Agreement, and may not grant Customer any rights to the Products beyond what is set forth in the ordering documentation between Ping Identity and Reseller.

**3. Use Guidelines; Restrictions.** Customer shall use the Products solely for its own business purposes in accordance with this Agreement and any related Order Form. Customer shall obtain any required authorizations or consents from Users for the transmission of Customer Data to Ping Identity and other third parties in connection with the Products and related processing by such persons, including as may be necessary under any data protection laws and regulations. Customer shall not: (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, copy, adapt, alter, translate or create derivative works of the Products; (iii) frame or mirror any content forming part of the Service, other than on Customer’s own intranets or otherwise for its own internal business purposes; (iv) reverse engineer, decompile or disassemble the Products (or otherwise attempt to derive the source code or underlying ideas or algorithms of the Software); (v) take any action that would cause the Products (including any license key) to be placed in the public domain; (vi) remove, alter, or obscure any proprietary notices of Ping Identity, its licensors or supplier included in the Products; (vii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws through the Service; (viii) send or store infringing, obscene, threatening, libelous, or

otherwise unlawful or tortious material, including material that is harmful to children or violates third-party privacy rights; (ix) send or store Malicious Code; (x) 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; (xi) access the Products in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Products; (xii) 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; or (xiii) attempt to gain unauthorized access to the Service or its related systems or networks.

#### **4. Fees & Payment; Audit.**

**4.1 Fees.** Customer shall pay all fees specified in any Order Forms hereunder in accordance with the GSA Schedule Pricelist (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. 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 in accordance with the GSA Schedule Pricelist and Customer shall remit such charges to Ping Identity.

**4.2 Invoicing & Payment Terms.** All Fees will be invoiced in accordance with the relevant Order Form. Unless otherwise stated in an Order Form, charges are due net thirty (30) days from the receipt 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.

**4.3 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 governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

**4.4 Taxes.** Ping Identity shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the Products) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3

**4.5 Suspension of Service for Critical Cause.** Ping Identity reserves the right to temporarily suspend the Service provided to Customer if: (i) Ping Identity reasonably believes that suspension of the Service is necessary to comply with the law or requests of governmental entities; or (ii) Ping Identity reasonably determines that Customer’s use of the Service in violation of this Agreement poses any security or vulnerability risk to Ping Identity or the Service. Customer shall only be responsible for fees and charges during the period of temporary suspension if the underlying cause was Customer’s breach of this Agreement. Ping Identity will endeavor to give advance notice of the suspension, to the extent it is able, taking into account the nature of the underlying cause. Ping Identity will restore access to the Service as soon as the underlying cause is mitigated.

#### **4.6 Audit of Software Usage.**

**(a) General.** 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 and shall be subject to Government security requirements. 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) in accordance with the GSA Schedule Pricelist.

#### **5. Confidentiality.**

**5.1 Definition of Confidential Information.** As used herein, “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 Products, business and marketing plans, technology and technical information, pricing information (excluding GSA Schedule pricing), financial results and information, product designs, product roadmaps, results of penetration testing, security reports or audits and business processes. 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. Confidential Information specifically excludes Customer Data. Customer Data obligations are set forth in Section 6 below.

**5.2 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.

**5.3 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.

**5.4 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. Ping Identity recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## **6. Customer Data and Security.**

**6.1 Use of Customer Data.** Ping Identity shall not provide the Customer Data to any third parties except as necessary to operate the Service. As between Ping Identity and Customer, Customer owns all rights, title and interest in and to all Customer Data.

**6.2 Customer Responsibilities.** Customer is solely responsible for all activities that occur in any Users' accounts and for compliance with this Agreement by Users. 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. 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.

**6.3 Nature of Customer Data.** Customer represents and warrants that it will not transmit or expose to Ping Identity any (i) protected health information (as that term is used in the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) or (ii) cardholder data (as regulated by the Payment Card Industry Security Standards Council) as a part of using the Products, in connection with Support Services, or otherwise under this Agreement.

**6.4 Compliance with Laws.** Each Party shall comply with all applicable local, state, national and foreign laws in the provision and use of the Products under this Agreement. Customer agrees that it has sole control over the nature and scope of the Customer Data processed by the Products, and the origin or location of Users. As such, it is Customer's sole responsibility to (i) obtain all required authorizations or consents from Users for the processing of the Customer Data, and (ii) ascertain that such Customer Data can be processed under this Agreement by the Service and in connection with Support Services in accordance with applicable law.

**6.5 User Requests for Information.** If any User requests details of Customer Data of such User that is processed by Ping Identity, Ping Identity will promptly notify Customer, unless prohibited by applicable law or ongoing investigation.

**6.6 Information Security.** 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. Ping Identity shall, at a minimum, maintain the security of the Service and the Customer Data in accordance with the security exhibit available at <https://www.pingidentity.com/security-exhibit> (the "Security Exhibit").

**6.7 Audits and Security Assessments.** Ping Identity is and will remain in compliance with the most recent SOC-2 and ISO 27001 standards throughout the term of this Agreement. Upon Customer's written request, Ping Identity will provide Customer with access to Ping Identity's security portal that contains, among other things, a copy of (i) the most recently completed SOC-2 Type II

audit report, (ii) its public ISO 27001 certificate and non-public Statement of Applicability, and (iii) the results of any recently completed penetration testing on the Service.

**6.8 Business Continuity/Disaster Recover.** 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.

**6.9 Retention and Destruction.** Upon Customer's written request Ping Identity will delete the Customer Data contained within the Service. Ping Identity will retain automated backup copies and log files generated by the Service that may contain Customer Data in accordance with Ping Identity's data retention policy. Such backup copies and log files will remain subject to Section 6 of this Agreement until deleted.

**6.10 Breach Notification.** Ping Identity will promptly notify Customer upon becoming aware of any breach of security leading to the unauthorized access to or acquisition of Customer Data in Ping Identity's possession or under its control (a "**Security Incident**"). Each Party will reasonably cooperate with the other with respect to the investigation and remediation of any Security Incident including, in the case of Ping Identity, prompt provision of the following, to the extent then known to Ping Identity: (i) a description of the Security Incident, (ii) the categories and approximate numbers of impacted individuals, (iii) possible consequences of the Security Incident, (iv) corrective actions taken or to be taken by Ping Identity, if any, (v) internal point(s) of contact that Customer may engage for managing or responding to Customer about the Security Incident, and (vi) Ping Identity's Data Protection Officer's contact information. All Security Incident notifications will be provided in a manner reasonably designed to provide Customer with actual notice of the Security Incident in a time-effective manner. Ping Identity's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Ping Identity of any fault or liability with respect to the Security Incident.

**6.11 Data Privacy Addendum.** The Data Privacy Addendum set forth at <https://www.pingidentity.com/data-privacy-addendum> (the "**DPA**") is incorporated by reference in to this Agreement and the current version is attached hereto as Exhibit B. This Agreement, and Customer's use of the Service's features and functionality, are Customer's complete set of instructions to Ping Identity in relation to the processing of Customer Data.

**6.12 Service Enhancement.** Ping Identity may collect and utilize Customer Data and information derived from Customer's use of the Service ("**Research Data**") for its internal business purposes of research and development for future products and for the improvement of current product and service offerings. Nothing in this section shall permit Ping Identity to provide Research Data to any third parties other than as elsewhere permitted by this Agreement. In addition, Ping Identity may aggregate Research Data with other data and/or other usage statistics with respect to the Products, in each case so that results are non-personally identifiable with respect to Customer or any User ("**Aggregated Data**"). Ping Identity may utilize such Aggregated Data for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Ping Identity's products and services and to create and distribute reports and other materials to third parties). For clarity, Ping Identity will only disclose Aggregated Data externally in a de-identified (anonymous) form that does not identify Customers or any Users, and that is stripped of all persistent identifiers (such as device identifiers, IP addresses, and cookie IDs). Ping Identity will retain, and Customer expressly disclaims, all intellectual property and other rights in any products or services Ping Identity develops pursuant to the usage rights herein, provided that no such products or services may contain any Customer Data.

## **7. Proprietary Rights.**

**7.1 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 performed by Ping Identity), including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

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

## **8. Warranties & Disclaimers.**

**8.1 Warranties.** Each Party represents that it has the legal power to enter into this Agreement. Ping Identity warrants that it will provide the Products in a manner consistent with industry standards applicable to the provision thereof, and will provide the Support Service and any professional services in a good, professional and workmanlike manner consistent with applicable industry standards.

**8.2 Performance Warranty for Software.** For a period of ninety (90) days after the date of delivery of the Software (the “**Warranty Period**”), Ping Identity warrants that the Software, 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 Software. 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 Software, terminate the license to the defective Software and refund Customer all unused, prepaid fees with respect to the defective Software.

**8.3 Harmful Code.** Ping Identity warrants that it will use commercially reasonable efforts, using industry standard practices, to ensure that the Products, in the form provided by Ping Identity to Customer, do not contain Malicious Code.

**8.4 Disclaimer.** THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS AND PING IDENTITY EXPRESSLY DISCLAIMS 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 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.

## **9. Indemnification.**

**9.1 Indemnification by Ping Identity.** Subject to the terms of the Agreement, Ping Identity will have the right to intervene to 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 U.S. or EU patents issued as of the Effective Date or any 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 that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer’s compliance with the Indemnification Conditions (defined below). Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516. 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 9.1 or otherwise with respect to any infringement 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 9.1 STATES PING IDENTITY’S ENTIRE LIABILITY AND THE CUSTOMER’S EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT.

## **9.2 Reserved.**

**9.3 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; (ii) give the indemnifying Party sole control of the defense thereof and any related settlement negotiations, including not making any admission of liability or take any other action that limits the ability of the indemnifying Party to defend the claim; and (iii) cooperating and, at the indemnifying Party’s request and expense, assisting in such defense.

## **10. Limitation of Liability.**

**10.1 Limitation of Liability.** NEITHER PARTY’S CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THE RELEVANT ORDER FORM (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER FOR SUCH RELEVANT ORDER FORM(S).



**10.2 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 PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, RIGHTS, OR TECHNOLOGY (iii) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR (iv) 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 LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**10.3 Limitations.** The disclaimers and limitations on liabilities contained in Sections 10.1 and 10.2 shall not apply to the obligations set forth in Section 9 (Indemnification) or a breach of Section 3 (Use Guidelines; Restrictions) or Section 5 (Confidentiality) of this Agreement.

## **11. Term & Termination.**

**11.1 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.

**11.2 Termination for Cause.** When the Customer 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, Ping Identity 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.

**11.3 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. 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 archived copies of Confidential Information 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.

**11.4 Outstanding Fees.** Termination shall 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 prior to the natural expiration of the Agreement, Ping Identity shall refund Customer any unused, prepaid fees covering the remainder of the subscription term after the date of termination.

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

## **12. General Provisions.**

**12.1 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.

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

**12.3 Open Source Software.** Certain items of software included with 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. Any applicable Open Source Software terms will be provided to Customer along with the Software and also upon any written request.

**12.4 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.

**12.5 Waiver and Cumulative Remedies.** Failure 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 remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**12.6 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.

**12.7 Third-Party Services.** The Products may be used by Customer to interface with certain third-party services and applications (“Third-Party Services”). Ping Identity makes no warranty regarding the operation or functionality of such Third-Party Services. Ping Identity does not guarantee that the Products will interoperate with any particular Third-Party Service, and Ping Identity’s support obligations set forth in Section 2.7 shall not extend to any Third-Party Services.

**12.8 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 in accordance with the provisions of FAR 42.1204; 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.

**12.9 Applicable Law and Venue.** The Federal laws of the United States govern this Agreement and all matters arising out of or relating to this Agreement, including, without limitation, validity, interpretation, construction, performance, and enforcement. .

**12.10 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.

**12.11 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). 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.

**12.12 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 to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Ping Identity acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71.

**12.13 Application Linkage in the Service.** If Customer is utilizing the Service to enable entities to connect into its applications, Ping Identity may list Customer’s name and accompanying logo within the Service portal and/or application catalog in order to facilitate such intended functionality of the Service. Customer hereby grants Ping Identity a limited, non-exclusive license to its trademarks in order to implement the foregoing provision. Notwithstanding the foregoing, Customer may contact Ping Identity following execution of this Agreement and request in writing that Ping Identity refrain from listing Customer on any of the materials and/or portals referenced herein.

**12.14 Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**12.15 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.

**12.16 Entire Agreement.** This Agreement, including all exhibits hereto, the Security Exhibit, the Support Policy, the DPA and all Order Forms, together with the underlying Schedule Pricelist, constitutes the final agreement between the Parties, and is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All exhibits and Order Forms are incorporated into this Agreement by reference. All prior agreements (including any click-through agreement associated with the Products), proposals or representations, written or oral, concerning the subject matter contained in this Agreement, are expressly superseded by this Agreement. Any prior 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, 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.

**12.17 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 the Support Policy, Security Exhibit and DPA from time to time by posting such amendment(s) at the URLs listed in Sections 2.7, 6.6 and 6.12, 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 same. In the event that Ping Identity modifies the Security Exhibit, the Support Policy or the DPA 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 Security Exhibit, Support Policy or DPA, as applicable, prior to such amendment.

**12.18 Counterparts.** This Agreement and 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.

IN WITNESS WHEREOF, the Parties' authorized signatories have duly executed this Agreement as of the Effective Date:

<b>Customer</b>		<b>Ping Identity Corporation</b>	
<b>By:</b>		<b>By:</b>	
<b>Name:</b>		<b>Name:</b>	
<b>Title:</b>		<b>Title:</b>	
<b>Address:</b>		<b>Address:</b>	1001 17 <sup>th</sup> Street, Suite 100
<b>City, State, Zip:</b>		<b>City, State, Zip:</b>	Denver, Colorado 80202
<b>Date:</b>		<b>Date:</b>	

**Exhibit A**

**Ping Identity Corporation Support Policy**

This Ping Identity Corporation (“**Ping Identity**”) Support Policy (this “**Policy**”) encompasses all support obligations that Ping Identity has toward you as Ping Identity’s customer (“**Customer**”).

**1. Responsibilities.**

1.1 During the Support Period, Ping Identity shall:

- (a) provide Customer access to all generally available updates, upgrades, enhancements, fixes, and new versions of the Software;
- (b) respond to and Resolve all Errors in accordance with Section 2 of this Policy;
- (c) maintain uptime availability of 99.95% per month for the Service (“**Uptime Availability**”). Uptime Availability does not include downtime that results from a Customer Cause or a Force Majeure Event;
- (d) provide unlimited telephone support to Customer during all Support Hours at +1-303-468-2857 (toll free: +1-855-355-7464); and
- (e) provide Customer with online access to a support portal (“**Support Portal**”). The Support Portal may include a case submission form, case status and history, security advisory history, license history, access to download licensed Products, knowledge base articles, and Documentation.

1.2 During the Support Period, Customer shall:

- (a) provide prompt notice of any Errors by the Support Portal (each, a “**Support Request**”). Customer shall include in each Support Request a description of the reported Error and the time Customer first observed the Error;
- (b) cooperate and assist Ping Identity in Resolving the Support Request by taking any reasonably necessary actions that Ping Identity may request, including but not limited to, reproducing operating conditions similar to those present when Customer detected the Error and providing relevant data, documents, and information; and
- (c) designate in writing to Ping Identity certain individual(s) at Customer who will provide timely and accurate information to Ping Identity in connection with a Support Request or Support Services.

**2. Severity Levels.** Ping Identity shall respond to Support Requests and Resolve Errors in accordance with the applicable Severity Level, Response Time, and Resolution Time set forth in the **Severity Level table** below. “**Response Time**” will be measured from the time Ping Identity receives a Support Request until Ping Identity has responded to that Support Request. “**Resolution Time**” will be measured from the time Ping Identity receives a Support Request until Ping Identity has Resolved that Support Request. “**Resolve**”, “**Resolved**”, “**Resolution**” and correlative capitalized terms mean that Ping Identity has corrected the Error, whether by a work-around or any other reasonable means, that prompted that Support Request.

**Severity Level Table:**

<b>Severity Level</b>	<b>Definition</b>	<b>Response Time</b>	<b>Resolution Time</b>
<b>1</b>	The Error results in complete interruption of a production system that impacts all users and no viable workaround exists. Customer must call Ping Identity to report a Severity Level 1 Error.	Ping Identity shall acknowledge receipt within one (1) hour of Customer’s submission of a Support Request. Ping Identity shall provide hourly updates via the Support Portal.	Ping Identity shall Resolve the Support Request as soon as practicable and no later than twenty four (24) hours after Ping Identity’s receipt of the Support Request.

2	The Error has a (i) severe impact on performance, important services/components are not functioning, or a subset of users cannot access necessary functionality in a production system; or (ii) critical business impact and deployment is delayed with a hard deadline approaching in a non-production environment.	During Support Hours, Ping Identity shall acknowledge receipt within two (2) hours of Customer's submission of a Support Request. Ping Identity and Customer will mutually agree on a schedule for ongoing updates.	Ping Identity shall Resolve the Support Request as soon as practicable and no later than forty eight (48) hours after Ping Identity's receipt of the Support Request.
3	The Error has a low impact on (i) a small number of users in a production environment; or (ii) development or quality assurance in a non-production environment.	During Support Hours, Ping Identity shall acknowledge receipt within one (1) Business Day of Customer's submission of a Support Request. Ping Identity will provide ongoing updates every five (5) days.	Ping Identity shall Resolve the Support Request as soon as practicable and no later than ten (10) days after Ping Identity's receipt of the Support Request.
4	Customer is letting Ping Identity know about a minor problem or enhancement request for which feedback is not required.	During Support Hours, Ping Identity shall acknowledgement receipt within three (3) Business Days of Customer's submission of a Support Request.	Not applicable.

3. **Supported Releases for Software.** Ping Identity provides Support Services for (i) the current Major Release of the Software, (ii) the Major Release prior to the current Major Release, and (iii) any other Major Release that was first made generally available within the prior two years (each, a “**Supported Release**”). “**Major Release**” means a new release of the Software as indicated by a change to the number to the left of the decimal point in the version number, for example, Version 2.1 upgraded to Version 3.0.

4. **Exclusions.** Custom Developments and Out-of-Scope Services are not subject to this Policy. Ping Identity shall provide Support Services for Custom Developments and Out-of-Scope Services only upon the mutual written agreement between Ping Identity and Customer, including any fees related thereto.

5. **Definitions.** Capitalized terms used the in this Policy shall have the meaning ascribed to such terms as set forth below or as otherwise defined in this Policy. Any capitalized terms not otherwise defined in this Policy shall have the meanings given to such terms in the main license or subscription agreement between Ping Identity and Customer (a “**Main Agreement**”).

“**Business Day**” means Monday through Friday, excluding weekends.

“**Custom Developments**” mean custom software, materials, or solutions designed to interact with the Products developed by (a) Customer, with or without Ping Identity's assistance, including the use of application programming interfaces (APIs) or other development tools related to the Products; or (b) Ping Identity for the benefit of Customer.

“**Customer Cause**” means: (a) any negligent or improper use (including improper installation or implementation), misapplication, misuse or abuse of, or damage to, the Products by Customer or any of its Representatives; (b) any maintenance, update, improvement or other modification to or alteration of Products by Customer or its Representatives that was not specifically authorized in writing by Ping Identity; (c) any use of the Products by Customer or its Representatives in a manner inconsistent with the then-current Documentation; (d) any use by Customer or its Representatives of any third-party software, computer hardware, network hardware, electrical, telephone, wiring and all related accessories, components, parts and devices that Ping Identity has not provided to Customer; (e) any use by Customer or its Representatives of a version of the Software that is not a Supported Release; or (f) any issue caused by Customer's information technology infrastructure, including computers, software, databases, electronic systems (e.g., database management systems) and networks.

“**Error**” means any reproducible failure of the Products to operate in all material respects in accordance with the then-current Documentation, provided that the issue is not due to a Customer Cause.

“**Force Majeure Event**” means any unavailability of the Service caused by circumstances beyond Ping Identity’s reasonable control, including without limitation, acts of God; acts of government; flood; fire; earthquakes; civil unrest; acts of terror, strikes or other labor problems (other than those involving Ping Identity employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Ping Identity’s possession or reasonable control, and denial of service attacks.

“**Out-of-Scope Services**” means any of the following: (a) any services requested by Customer for Products for which Customer has not purchased or paid for Support Services; (b) any services requested by Customer in connection with any apparent Error that Ping Identity determines in its reasonable discretion to have been caused by a Customer Cause; or (c) any other services that Customer and Ping Identity may from time to time agree in writing are not included in the Support Services.

“**Representative**” means any employee, contractor, or agent of Customer or an Affiliate of Customer.

“**Service**” means Ping’s proprietary hosted service offering that is subscribed to by Customer under a Main Agreement.

“**Severity Level**” means the level of severity assigned to an Error and as further defined in the **Severity Level Table**. Ping Identity shall assign the respective Severity Level to an Error, subject to the parties’ written agreement to revise such designation after Ping Identity’s investigation of the reported Error and consultation with Customer.

“**Software**” means those proprietary software offerings that Customer licenses from Ping Identity under a Main Agreement.

“**Support Hours**” means (a) **24x7x365** for Support Requests related to **Severity Level 1 Errors** and (b) 24 hours on Business Days for all other Support Requests.

“**Support Period**” means the term specified in any ordering documentation between Ping Identity and Customer during which Ping Identity shall provide Support Services to Customer.

“**Support Services**” means Ping Identity’s maintenance and support services.

## Exhibit B

### Data Privacy Addendum

This Data Privacy Addendum (“**DPA**”) relates to the processing by Ping Identity of Personal Data (as defined below) provided by Customer under the Agreement.

#### 1. Definitions

“Data Controller” means the entity which determines the purposes and means of the Processing of Personal Data.

“Data Processor” means the entity which Processes Personal Data on behalf of the Data Controller.

“Data Protection Laws and Regulations” means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC; and any other similar data protection laws in any other applicable territory, each as amended, replaced, or superseded.

“Data Sub-processor” means any Data Processor engaged by Ping Identity to Process Personal Data.

“Personal Data” means any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws and Regulations that is: (i) Processed by Ping Identity’s products that are provided as a hosted, software-as-a-service application; (ii) provided to Ping Identity by Customer in the form of a log file generated by Ping Identity products that are provided as downloadable software in connection with support activities; or (iii) obtained by Ping Identity personnel in the performance of professional services ((i) through (iii) hereunder collectively referred to as “Services”).

“Data Subject” means the individual to which the Personal Data relates.

“Processing” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

#### 2. Processing of Personal Data

*2.1 Provision of Service.* Ping Identity provides a Service to Customer as specified in the Agreement. In connection with this Service, the parties anticipate that Customer may transfer to Ping Identity some Customer Data that contains Personal Data relating to Data Subjects. The Agreement may include restrictions regarding the types of Personal Data that may be provided by Customer to Ping Identity. Such restrictions are hereby incorporated into this DPA.

*2.2 The parties’ roles.* The parties agree that with regard to the Processing of Personal Data, Customer is the Data Controller, Ping Identity is the Data Processor and Ping Identity may engage Data Sub-processors pursuant to the requirements of this DPA. Customer is the owner of any and all Personal Data.

*2.3 Purpose limitation.* Ping Identity will only Process Personal Data for the duration of the Agreement and on behalf of and in accordance with Customer’s documented instructions as reasonably contemplated by the Agreement. Ping Identity shall not be required to comply with or observe Customer’s instructions if, in its reasonable discretion, such instructions would violate any Data Protection Laws and Regulations, and Ping Identity shall promptly notify Customer thereof. This DPA, the Agreement, and Customer’s use of the Service’s features and functionality, are Customer’s complete set of instructions to Ping Identity in relation to the processing of Personal Data.

#### 3. Responsibilities

*3.1 Ping Identity’s responsibility.* Ping Identity shall cooperate and provide Customer with assistance that Customer deems reasonably necessary to comply with applicable Data Protection Laws and Regulations in regards to Ping Identity’s Processing of Personal Data. Customer acknowledges that the Services are provided from certain fixed locations in the world that cannot be altered to suit each individual customers’ needs and are also engineered and designed based on principles that may not accommodate every potential Data Protection Law and Regulation. Customer acknowledges that Ping Identity is not responsible for determining the requirements of Data Protection Laws and Regulations applicable to Customer’s business.

*3.2 Privacy Shield.* Ping Identity represents that it has a valid certification to the EU-U.S. Privacy Shield and the Swiss-U.S. Privacy Shield (collectively, “Privacy Shield”) as of the date of this DPA, evidencing its placement and good standing on the U.S. Department



of Commerce's Privacy Shield List. Ping Identity agrees that at any and all times during which Ping Identity Processes Personal Data outside the European Economic Area ("EEA") or Switzerland that originates from the EEA and/or Switzerland, or concerns citizens or residents of the EEA and/or Switzerland, Ping Identity will: (i) provide at least the same level of protection for such Personal Data received pursuant to this DPA as is required by Privacy Shield; and (ii) ensure Ping Identity maintains its EEA and/or Swiss Privacy Shield self-certification(s) for so long as it retains such Personal Data pursuant to this DPA, or as otherwise set forth in Section 3.3 of this DPA.

**3.3 Modifications.** If Privacy Shield is deemed inadequate by a government or regulatory authority or Ping Identity fails to maintain a valid Privacy-Shield certification during the term of the Agreement, then the parties will negotiate in good faith and in a timely manner to implement appropriate standard contractual clauses between controllers and processors approved by the European Commission or implement an alternative legal mechanism of ensuring an adequate level of protection for Personal Data under applicable Data Protection Laws and Regulations. In the event that a change in Data Protection Laws and Regulations occurs during the term of this Agreement such that the Services do not enable compliance with such change, and as a result of such change Ping Identity is unable to alter the Services without undue burden (in Ping Identity's sole discretion), then Customer may elect to terminate the Agreement and all outstanding subscriptions to Ping Identity's Products without penalty, and receive a refund of any prepaid, unused Fees.

**3.4 Customer's responsibility.** Customer shall be responsible for ensuring that it has, and will continue to have, the right to transfer, or provide access to, Personal Data to Ping Identity for Processing. Customer's instructions for the Processing of Personal Data by Ping Identity shall at all time comply with applicable Data Protection Laws and Regulations and Customer shall ensure that Ping Identity's Processing of Personal Data in accordance with Customer's instructions will not cause Ping Identity to violate any applicable Data Protection Laws and Regulations. In the event Customer becomes aware that provided instructions are in conflict with applicable Data Protection Laws and Regulations, Customer will promptly notify Ping Identity. Customer recognizes that Ping Identity does not have a means to verify (i) the residency of each Data Subject, (ii) the aspects of Personal Data that are provided to Ping Identity by Customer in connection with each request by Customer to Process such Personal Data, nor (iii) the location of third parties that Customer chooses to exchange Personal Data with as part of the intended functionality of the Service (such as in a single-sign on transaction). Customer shall be responsible for ensuring that all such Personal Data may be Processed by Ping Identity's Services in compliance with Data Protection Laws and Regulations, and Ping Identity will provide all reasonably necessary information to Customer to allow Customer to make such determination upon Customer's written request. If any authorizations or consents of Data Subjects are required for the Processing of Personal Data by Ping Identity, Customer shall be required to obtain any such consents directly from the Data Subjects.

**3.5 Ping Identity's duty of cooperation.** In particular, but without limiting the generality of the foregoing, if Customer reasonably determines that applicable Data Protection Laws and Regulations require an assessment of privacy impacts of any Processing of Personal Data carried out by Ping Identity ("Data Protection Impact Assessment"), Ping Identity will reasonably cooperate with Customer's conduct of the assessment to the extent applicable to Ping Identity's responsibilities under this DPA and the Agreement. If Customer reasonably determines that applicable Data Protection Laws and Regulations require Customer to notify, seek guidance from, or consult with any governmental authority or representative body, concerning Ping Identity's Processing of Personal Data, Ping Identity will reasonably cooperate with Customer in connection with such advisory request or consultation to the extent applicable to Ping Identity's responsibilities under this DPA and the Agreement, and as allowed by Data Protection Laws and Regulations.

**3.6 Data Protection Officer.** Ping Identity has appointed a data protection officer. The appointed person may be reached at [dpo\\_privacy@pingidentity.com](mailto:dpo_privacy@pingidentity.com).

## **4. Storage and access to Personal Data**

**4.1 Data residency.** With respect to Ping Identity's hosted service, Customer may select the data center(s) in which Personal Data shall be stored. Personal Data received through the Services may be disclosed to, transferred to, and/or allowed to be accessed by or otherwise Processed by Ping Identity's personnel or the Data Sub-processors. Personal Data may be transferred to personnel of Ping Identity located in Europe, Australia, Canada, United States, or Israel in the course of the Services. Ping Identity will notify Customer if the foregoing list of countries changes (which notice may be provided through support channels, Ping Identity's website, Ping Identity's status notifications that may be subscribed to at <https://status.pingidentity.com>, or such other reasonable means). In the event that the foregoing list of countries to which Personal Data may be transferred is changed, the parties agree to cooperate in good faith in meeting any additional regulatory or legal requirements necessary to allow such transfers. Notwithstanding the foregoing, with the exception of Personal Data processed through the hosted service, certain Personal Data may be stored by Ping Identity or its Data Sub-processors in the U.S. for operational purposes.

**4.2 Ping Identity's access to Personal Data.** Ping Identity shall ensure that access to Personal Data is restricted to only those personnel who have a need to know to enable Ping Identity to perform its obligations under the Agreement and this DPA. Ping Identity's personnel engaged in the Processing of Personal Data shall be informed of the confidential nature of the Personal Data, have received

appropriate training regarding their responsibilities, and be bound in writing by obligations of confidentiality sufficient to protect Personal Data in accordance with the terms of this DPA.

4.3 *Access by authorities.* To the extent permitted by Data Protection Laws and Regulations, Ping Identity will promptly, and no later than five (5) business days following receipt, notify Customer of (i) any request for access to any Personal Data from any regulatory body or government official, and (ii) any warrant, subpoena, or other request to Ping Identity regarding any Personal Data. Ping Identity will comply with any legal hold from Customer regarding Personal Data and will provide reasonable support so that Customer can comply with third party requests as required by Data Protection Laws and Regulations if Customer cannot otherwise reasonably obtain such information. Ping Identity will reasonably cooperate with Customer if Customer or its regulators properly requests access to Personal Data for any reason in accordance with the Agreement, this DPA, or applicable Data Protection Laws and Regulations.

## 5. Data Sub-processors

5.1 *Ping Identity's use of Data Sub-Processors.* By executing this DPA, Customer has given its general written consent and authorization for Ping Identity to engage Data Sub-processors in connection with the Services. The current list of Data Sub-processors is set forth at <https://www.pingidentity.com/sub-processors> (which link may be updated by Ping Identity from time to time in accordance with Section 5.3 of this DPA).

5.2 *Onward Transfer of Personal Data.* Any transfer by Ping Identity of Personal Data to a Data Sub-processor will be governed by a written contract providing that the Data Sub-processor will process Personal Data in accordance with Ping Identity's instructions as required by Data Protection Laws and Regulations. Ping Identity conducts an annual review and assessment of its Data Sub-processors to ensure such Data Sub-processors have in place proper organizational and technical safeguards to ensure the protection of Personal Data.

5.3 *Appointment of new Data Sub-processors.* Ping Identity may not transfer Personal Data to any other Data Sub-processor without providing prior written notice to Customer (which notice may be provided through <https://www.pingidentity.com/sub-processors> or such other reasonable means); provided, that Customer will have ten (10) business days to reasonably object that such change causes Customer to be in violation of Data Protection Laws and Regulations. In the event that Customer has not provided an objection to such changes within ten (10) business days, Customer will be deemed to have waived its right to object and to have consented to the use of the new or alternative Data Sub-processor. In the event that Customer reasonably objects to such change, Ping Identity shall, in its sole discretion, use commercially reasonable efforts to (1) offer an alternative to provide the Service to Customer; (2) take the corrective steps requested by Customer in its objection and proceed to use the new Data Sub-processor; or (3) cancel its plans to use the Data Sub-processor. If Ping Identity is unable or unwilling to achieve either (1) through (3) in its sole discretion and the objection has not been resolved to the mutual satisfaction of the parties within thirty (30) days after Ping Identity's receipt of the objection, Customer may, as its sole and exclusive remedy available under this Section 5.3, terminate its applicable subscriptions from Ping Identity with respect only to those aspects of the Service which cannot be provided by Ping Identity without the use of the new Data Sub-processor. In such event, Ping Identity shall refund Customer any unused, prepaid Fees for the applicable Service covering the remainder of the subscription term after the date of termination.

5.4 *Liability.* Ping Identity shall be liable for the performance of its Data Sub-processors to the same extent Ping Identity would be liable if Processing Personal Data itself.

## 6. Data Subject's rights

6.1 *Requests and complaints.* To the extent legally permitted, Ping Identity shall promptly notify Customer in writing if Ping Identity receives any request from a Data Subject with respect to Personal Data being Processed. Ping Identity shall not directly respond to any such request, unless authorized and directed to do so by Customer or required by applicable Data Protection Laws and Regulations. Ping Identity shall reasonably cooperate with Customer and may charge Customer a reasonable fee for such cooperation with respect to any action taken relating to such request.

## 7. Security measures

7.1 *Ping Identity's obligations.* Ping Identity shall provide appropriate technical and organizational measures to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data, taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects. Ping Identity shall, at a minimum, maintain the security of the Service and the Customer Data in accordance with Ping Identity's Security Exhibit, accessible via <https://www.pingidentity.com/en/legal/security.html>.

7.2 *Determination of security requirements.* Customer acknowledges that the Service includes certain features and functionalities that Customer may elect to use that impact the security of Personal Data, such as, but not limited to, encryption of voice recordings and availability of multi-factor authentication on Customer's Ping Identity account. Customer is responsible for reviewing the information Ping Identity makes available regarding its data security, including its audit reports, and making an independent determination as to whether Ping Identity's Service meets Customer's requirements and legal obligations, including its obligations under this DPA. Customer is further responsible for properly configuring Ping Identity's products to maintain appropriate security in light of the nature of the data processed by such products.

## 8. Security Incident response and notification

8.1 *Discovery and investigation of a breach.* Ping Identity will notify Customer without undue delay upon becoming aware of an accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data Processed by Ping Identity (a "**Personal Data Incident**"). Ping Identity shall make reasonable efforts to identify the cause of a Personal Data Incident and take those steps as Ping Identity deems necessary and reasonable in order to remediate the cause of such Personal Data Incident, to the extent that the remediation is within Ping Identity's reasonable control. The obligations set forth herein shall not apply to incidents that are caused directly or indirectly by either the Customer or Users.

8.2 *Notification format and contents.* Ping Identity shall direct its notice by email to the address provided by Customer in Ping Identity's customer portal. Such notice shall include, if known by Ping Identity: (i) a description of the Personal Data Incident, (ii) the categories and approximate numbers of impacted individuals, (iii) possible consequences of the Personal Data Incident, (iv) corrective actions taken or to be taken by Ping Identity, if any, (v) internal point(s) of contact that Customer may engage for managing or responding to Customer about the Personal Data Incident, and (vi) Ping Identity's Data Protection Officer's contact information.

## 9. Retention, return and deletion of Personal Data

9.1 *Personal Data retention.* Ping Identity will retain Personal Data only as long as reasonably necessary and in accordance with Ping Identity's retention policy, and only to accomplish the intended purpose for which the Personal Data has been Processed pursuant to this DPA.

9.2 *Return and deletion of Personal Data upon termination.* When Personal Data is no longer necessary for the purposes set forth in this DPA or at an earlier time as Customer requests in writing, Ping Identity will (i) provide to Customer, in the format and on the media as mutually agreed between the parties, a copy of all or, if specified by Customer, any part of the Personal Data; and/or (ii) delete all, or if specified by the Customer, any part of the Personal Data in Ping Identity's possession, except for backups and monitoring data which will be deleted per Ping Identity's data retention policy. Any Personal Data that is not immediately deleted will continue to be protected as set forth in this DPA.

9.3 *Customer's copy of Personal Data.* During the term of the Agreement, Ping Identity will provide Customer with the capability to obtain a copy of its Personal Data by way of an API and/or console. Upon termination or expiry of the Agreement, and upon request, Ping Identity will provide a reasonable opportunity for Customer to obtain a copy of its Personal Data and delete the same. This requirement shall not apply to the extent that Ping Identity is required by Data Protection Laws and Regulations to retain some or all of the Customer Data it has archived on back-up systems, which Ping Identity shall securely isolate and protect from any further processing except to the extent required by Data Protection Laws and Regulations.

**10. Limitation of liability.** Each party's liability arising out of or related to this DPA, whether in contract, tort or under any other theory of liability, is subject to any limitation of liability as set forth in the Agreement and any reference to such limitation of liability of a party means the aggregate liability of the party under the Agreement and this DPA together.

## 11. Security audits

11.1 *Audit reports.* Ping Identity uses external auditors to verify the adequacy of its security measures with respect to its processing of Personal Data. Such audits are conducted at least annually, are performed at Ping Identity's expense by independent third-party audit professionals at Ping Identity's selection, and result in a confidential audit report. A list of Ping Identity's certifications and/or standards for audit as of the date of this DPA can be found at <https://www.pingidentity.com/en/legal/security.html>. Upon Customer's written request at reasonable intervals, and subject to reasonable confidentiality controls, Ping Identity shall make available to Customer a copy of Ping Identity's most recent applicable audit report(s) as described in this Section 11.1. For the avoidance of doubt, nothing in this Agreement shall be construed as permitting Customer access to Ping Identity's production or non-production systems, source code, or access to anything that may expose confidential information of other customers of Ping Identity.

11.2 *Ping Identity's duty of cooperation.* Upon Customer's reasonable written request at any time during the term of this DPA, Ping Identity shall 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; (ii) copies of relevant third party audits, reviews, tests, or certifications of Ping Identity's systems or processes, including an annual SOC 2 report; (iii) a summary of Ping Identity's operational practices related to data protection and security; and (iv) making Ping Identity personnel reasonably available for security-related discussions with Customer.

## **12. Miscellaneous**

12.1 *Order of precedence.* Except as specifically set forth in this DPA, the terms and provisions of the underlying Agreement shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Agreement and the terms of this DPA, the terms and provisions of this DPA shall prevail.

12.2 *Duration of this DPA.* This DPA shall remain in effect until, and automatically expire upon, deletion of all Personal Data by Ping Identity as described in this DPA.

12.3 *Amendments.* If an amendment to this DPA, including its exhibits, is required in order to comply with applicable Data Protection Laws and Regulations, both parties will work together in good faith to promptly execute a mutually agreeable amendment to this DPA reflecting the requirements set out by the applicable Data Protection Laws and Regulations.

12.4 *Severability.* If any provision of this DPA is ineffective or void, this shall not affect the remaining provisions. The parties shall replace the ineffective or void provision with a lawful provision that reflects the business purpose of the ineffective or void provision. Any such change is subject to a written agreement by both parties.