



MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement ("Master Agreement") is made as of the last signature date listed below ("Effective Date") between **Proofpoint, Inc.**, a Delaware corporation, with offices at 925 W. Maude Ave, Sunnyvale, CA 94085 USA ("Proofpoint") and _____ with offices at _____ ("Customer").

Proofpoint is a leading cybersecurity company that helps companies around the world stop targeted threats, safeguard their data, and make their users more resilient against cyberattacks. Organizations of all sizes rely on Proofpoint for people-centric security and compliance solutions that mitigate their most critical risks across email, the cloud, social media, and the web. The purpose of this Master Agreement is to create a single mechanism under which Customer may license Proofpoint Products under a subscription licensing model.

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1. License Terms

1.1. **Customer License.** Subject to the terms of the Agreement, Proofpoint grants to Customer a worldwide, royalty-free, non-exclusive, time-limited, non-transferable (except to a successor-in-interest as permitted hereunder), limited license to access and/or use (as applicable) the Proofpoint Products during the Term in the quantities of Licenses specified in the applicable Purchase Order and subject to any limitations set forth in the corresponding applicable quote, solely for Customer's own internal business purposes. Customer may authorize subcontractors and/or Affiliates to access and/or use the Proofpoint Products, subject to the number of Licenses authorized by the Agreement and the terms and conditions of the Agreement; provided Customer is liable for all acts and omissions of the subcontractors and/or Affiliates. Customer may use the Documentation in connection with the License granted hereunder.

1.2. Warranties, Remedies and Disclaimers.

1.2.1 Each party warrants that (i) it has the legal power to enter into, and perform under, the Agreement; and (ii) it shall comply with all applicable laws in its performance hereunder.

1.2.2. Warranties and Remedies.

(a) **Performance Warranties.** Proofpoint warrants that during the Subscription Term the applicable Service ("SaaS Warranty") and Software ("Software Warranty") will substantially conform in all material respects to the Documentation. Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Documentation in its sole discretion, provided the functionality of the Service or Software, as applicable, will not be materially decreased during the Term. The Software Warranty does not apply to: (a) Software that has been modified by any party other than Proofpoint; or (b) Software that has been improperly installed or used in a manner other than as authorized under the Agreement. The following shall be applicable in the event that Customer purchases an Appliance: <https://www.proofpoint.com/us/support/email-appliance-warranty-eol>.

(b) **SaaS and Software Warranty Remedy.** As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the SaaS Warranty or the Software Warranty, Proofpoint will (a) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Service or Software, as applicable, or if Proofpoint is unable to do so, (b) terminate the license to use such component of the Service or the applicable Software and return the Subscription Fees paid to Proofpoint for such allegedly defective Service or Software, as applicable, for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable.

1.2.3. Warranty Disclaimers.

(a) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, PROOFPOINT AND PROOFPOINT LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY WARRANTIES OF REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT.

(b) PROOFPOINT DOES NOT WARRANT: (I) THE ACCURACY OF THE INTENDED EMAIL BLOCKING OF ANY MAIL MESSAGE; (II) THAT EMAIL WILL NOT BE LOST; (III) THAT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE; (IV) THAT ALL SOFTWARE ERRORS WILL BE CORRECTED; OR (V) THAT THE PROOFPOINT PRODUCTS WILL PROTECT AGAINST ALL POSSIBLE THREATS OR ATTACKS.

1.3. Service Level Agreement. Proofpoint provides a Service Level Agreement (“SLA”) for the applicable Proofpoint Service. The SLA is posted on Proofpoint’s website at <http://www.proofpoint.com/license>. In the event of a breach of an SLA, as Customer’s sole and exclusive remedy, Proofpoint shall provide the remedy set forth in the applicable SLA.

2. Customer Responsibilities

2.1. Restrictions. Customer specifically agrees to limit the use of the Proofpoint Products to those parameters set forth in the applicable Purchase Order and the Product Terms. Without limiting the foregoing, Customer specifically agrees not to: (i) resell, sublicense, lease, time-share or otherwise make a Proofpoint Product (including the Documentation) available to any third party (except Affiliates and subcontractors); (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein (including but not limited to hacking or penetration testing Proofpoint’s systems); (iii) modify, copy or create derivative works based on a Proofpoint Product; (iv) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from a Proofpoint Product, in whole or in part; and/or (v) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface.

2.2. Prohibitions. In addition, Customer agrees not to use a Proofpoint Product, or permit it to be used, for purposes of: (i) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer organization without Proofpoint’s prior written consent; (ii) infringement of the intellectual property rights of any third party or any rights of publicity or privacy; (iii) violation of any law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, anti-discrimination, and/or false advertising or misuse of Proofpoint Products in violation of this subsection (iii)); (iv) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (v) filing copyright or patent applications that include the Proofpoint Products and/or Documentation or any portion thereof.

3. Confidentiality

3.1. Receiving Party shall not (i) disclose any Confidential Information of the Disclosing Party to any third party, except as otherwise expressly permitted herein, or (ii) use any Confidential Information of Disclosing Party for any purpose outside the scope of the Agreement, except with Disclosing Party’s prior written consent. The Receiving Party shall not make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a “need to know” such Confidential Information. The Receiving Party agrees to hold the Disclosing Party’s Confidential Information in confidence and to take all precautions to protect such Confidential Information that the Receiving Party employs with respect to its own Confidential Information of a like nature, but in no case shall the Receiving Party employ less than reasonable precautions. The Agreement will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, to the extent permitted by law, the responding party shall give prompt written notice to the other party to enable the other party to seek a protective order or otherwise prevent or restrict such disclosure and, if disclosed, the scope of such disclosure is limited to the extent possible.

3.2. The Receiving Party will return all copies of the Disclosing Party’s Confidential Information upon the earlier of (i) the Disclosing Party’s request, or (ii) the termination or expiration of the Agreement. Instead of returning such Confidential Information, the Receiving Party may destroy all copies of such Confidential Information in its possession; provided, however, the Receiving Party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in the strictest confidence for so long as the Confidential Information remains in the possession of the Receiving Party.

3.3. The parties acknowledge and agree that the confidentiality obligations set forth in this Master Agreement are reasonable and necessary for the protection of the parties’ business interests, that irreparable injury may result if such obligations are breached, and that, in the event of any actual or potential breach of this Confidentiality provision, the non-breaching party may have no adequate remedy at law and shall be entitled to seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction.

4. Data Security & Privacy

4.1. Limited Use of Personal Data. Proofpoint and its subsidiaries are authorized to access and process Personal Data solely in accordance with the terms of the Agreement. Proofpoint and its subsidiaries shall take reasonable steps to ensure the reliability of any employee, agent or subcontractor who may have access to the Personal Data and will ensure access is strictly limited to those individuals who need to access the relevant Personal Data in the performance of Proofpoint’s obligations under the Agreement.

4.2. Data Safeguards. Proofpoint will maintain reasonable administrative, physical, and technical safeguards for protection of the security and confidentiality of Customer Data and Personal Data, including, but not be limited to, measures for preventing unauthorized access, use, modification or disclosure of Customer Data and Personal Data. Proofpoint will comply with its Data Security, Protection, Audit and Compliance Policy at <https://www.proofpoint.com/us/legal/license> when processing any Customer Data and Personal Data. Additional information can be found at Proofpoint’s [Trust Site](https://www.proofpoint.com/us/legal/trust) located at <https://www.proofpoint.com/us/legal/trust>.

5. Financial Terms

5.1. Fees. Fees for the Proofpoint Products will be the Subscription Fees and other fees set forth in the Purchase Orders (collectively, the “Fees”). The Fees stated in each Purchase Order shall be effective during the Initial Term specified in that Purchase Order; the Subscription Fees and other fees for each Extension Term shall be defined in the applicable Purchase Order or, in the absence of any such terms regarding Fees for Extension Terms, by mutual agreement of the parties.

5.2. Taxes. Customer will be liable for payment of all Taxes that are levied upon and related to the performance of obligations or exercise of rights under the Agreement. Proofpoint may be required to collect and remit Taxes from Customer, unless Customer provides Proofpoint with a valid tax exemption certificate. The amounts received by Proofpoint, after the provision for any Tax or withholding required by any country, will be equal to the amounts specified on the Purchase Order. In no event will either party be responsible for any taxes levied against the other party’s net income.

5.3. Payment. Unless otherwise agreed between Customer and Reseller, all Fees due under a Purchase Order shall be due and payable within thirty (30) days of receipt of invoice. Except as otherwise expressly permitted herein, all Fees owed pursuant to a Purchase Order are non-cancellable and non-refundable for the Term. Any payment not received from Customer by the due date may accrue

(except for amounts then under reasonable and good faith dispute) interest at the rate of one and one-half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Proofpoint may decline to make any shipments of Proofpoint Products and/or provide Managed Services and/or Professional Services if, in Proofpoint's reasonable opinion, circumstances exist which raise doubt as to Customer's ability or willingness to pay as provided herein. Failure to make timely payment may result in immediate termination of access to the Proofpoint Products and/or cessation of provision of Managed Services and/or Professional Services. Upon default by Customer, Proofpoint will have all remedies available at law or in equity. No refunds will be made except as expressly provided for pursuant to warranties under Section 1.2 or Section 6 herein for the applicable Proofpoint Product, Managed Services and/or Professional Services and as provided under the intellectual property indemnity under Section 8 herein.

5.4. **Disputed Invoices.** Customer shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach agreement with respect to such disputed amounts, and such withholding of disputed amounts shall not be deemed a breach of the Agreement nor shall any interest be paid thereon. In such case, Customer shall promptly (and in no event more than ten (10) business days from receipt of invoice) provide written notice to Proofpoint of any such dispute prior to withholding such payment, specifying in reasonable detail the nature of the dispute and the amount withheld, and shall pay all undisputed amounts set forth on such invoice in accordance with this Section. The parties will negotiate in good faith to attempt to resolve such disputes within thirty (30) days of submission of such dispute by Customer.

5.5. **License True-Up.** Customer shall monitor and report its actual usage of the subscription-based Proofpoint Products ("License Count") as set forth herein. A "Base License" is the number of Licenses for which Customer has paid Subscription Fees. Customer will provide Proofpoint with a License Count on or before the date on which the then-current License Count exceeds the Base License Count by ten percent (10%) or more (if applicable) by email at accountsreceivable@proofpoint.com. Proofpoint may also at any time produce an actual license count for verification by Customer. If, in either case, the License Count is greater than the Base License, Customer shall pay Proofpoint or Reseller, as applicable, for each License beyond the Base License from the time such Licenses were activated through the remainder of the Initial Term or Extension Term, as applicable.

5.6. **Appliance Shipment, Delivery, Title, Risk of Loss.** Proofpoint will ship the physical Appliance Ex Works (Proofpoint's facility), as defined by Incoterms 2010. Unless specified in advance by Customer, Proofpoint will select the carrier in its own discretion. Customer will be responsible for all freight, packing, duties, import fees and related taxes, insurance and other shipping-related expenses from Proofpoint's location. Title to the physical Appliance (excluding any software or firmware embedded in the Appliance) and risk of loss will pass to Customer upon Proofpoint's delivery of the physical Appliance to the carrier. Any Software Updates shall be delivered via file transfer protocol unless physical shipment (e.g., compact disk) is specifically requested by Customer.

6. Support, Managed Services and Professional Services

6.1. Proofpoint shall provide support and/or Managed Services provided Customer is current in payment of the applicable Subscription Fees and any additional fees for support and/or Managed Services, if applicable. Proofpoint's current support terms are described on Proofpoint's website at <https://www.proofpoint.com/us/legal/license>.

6.2. Proofpoint shall provide the Professional Services and/or Managed Services, if any, specified in one or more SOWs. All Professional Services shall be billed as stated in the applicable SOW and Customer agrees that, if Customer has not used the Professional Services within one (1) year of paying for such Professional Services, then Proofpoint has no further obligations and Customer shall not be entitled to a refund except as set forth expressly in the applicable SOW.

6.3. Proofpoint warrants it will provide Managed Services and/or Professional Services in a professional and workmanlike manner consistent with reasonable industry standards and practices. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will use reasonable efforts to re-perform the Managed Services and/or Professional Services, as applicable, or, if Proofpoint is unable to do so, terminate the applicable Managed Services and/or SOW and refund that portion of any fees paid to Proofpoint that correspond to the allegedly defective Managed Services and/or Professional Services.

7. Term, Termination and Expiration

7.1. Unless otherwise set forth in the applicable Product Terms or Purchase Order, the Initial Term applicable to each Purchase Order (including follow-on orders) commences on the later of: (i) the date Proofpoint ships a production Appliance to Customer, (ii) the date Proofpoint processes the applicable Purchase Order for a Proofpoint Product evaluated by the Customer, or (iii) for all other Proofpoint Product orders, the date Proofpoint sends to Customer an email indicating that the Proofpoint Products are available for use (to the extent each of the foregoing applies to Customer's engagement). Upon expiration of the Initial Term and any Extension Term(s) under each Purchase Order, the Subscription Term applicable to such Purchase Order shall automatically renew for subsequent Extension Terms unless otherwise agreed by the parties or either party gives the other notice of non-renewal at least ninety (90) days prior to the end of the relevant Subscription Term.

7.2. Either party may terminate the Agreement or any Purchase Order (i) immediately upon written notice if the other party commits a non-remediable material breach; or (ii) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach, unless such breach is for non-payment and then within five (5) days of such notice.

7.3. Either party may terminate the Master Agreement immediately by written notice if no Purchase Order is in effect.

7.4. On termination or expiration of the Agreement, all Software licenses, Service access, Managed Services access and/or Professional Services fulfillment granted under the Agreement shall automatically terminate with immediate effect. In the event of the termination or expiration of the Agreement, the provisions of the Agreement which by their nature extend beyond the expiration or termination of the Agreement shall survive, including but not limited to Section 2 ("Customer Responsibilities"); Section 3 ("Confidentiality"); Section 5 ("Financial Terms"); Section 7 ("Term, Termination and Expiration"); Section 9 ("Intellectual Property Rights, Licenses and Authorizations"); Section 10 ("Limitation of Liability"); Section 11 ("General"); and Section 12 ("Definitions"); and any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

8. Intellectual Property Indemnity

8.1. Proofpoint's Duty to Indemnify. Subject to the subsections below within this Section 8, Proofpoint agrees to defend and indemnify Customer from and against any third-party claim filed against Customer alleging that the Proofpoint Product(s), as sold and delivered to Customer (the "Indemnified Products"), directly infringe the valid intellectual property rights of a third party (a "Claim"). Proofpoint agrees to pay and hold Customer harmless against any amounts finally awarded by a court of law in respect of such Claim or pursuant to its signed settlement. Proofpoint may, at its sole election and expense: (i) procure sufficient rights to allow Customer continued use and exploitation of the Indemnified Products under the terms of the Agreement; (ii) replace or modify the Indemnified Products to avoid the alleged infringement; or (iii) if the foregoing options are not reasonably practicable, terminate Customer's rights to use the Indemnified Products and refund all amounts paid by Customer to Proofpoint attributable to Customers' future usage or access to the Indemnified Products.

8.2. Exclusions. Proofpoint shall have no obligation or any liability to Customer for any Claim arising out of or related to: (i) modifications or adaptations to the Indemnified Products made by Customer or Customer's agents; (ii) the use of the Indemnified Products in combination with any other product, service or device, if the Claim would have been avoided by the use of the Indemnified Products without such other product, service or device not provided by Proofpoint to Customer or Customer's agents; (iii) compliance with Customer's specific instructions for customization of an Indemnified Product made solely for or on behalf of Customer; (iv) use or exploitation of the Indemnified Products other than as set forth in the Agreement or applicable Documentation; or (v) Customer being given an update, modification, or replacement to an Indemnified Product by Proofpoint and failing to implement such update, modification, or replacement within a reasonable period of time.

8.3. Process. Proofpoint's obligations under this Section 8 are conditioned upon the following: (i) Customer first providing written notice of the Claim to Proofpoint within thirty (30) days after Customer becomes aware of or reasonably should have been aware of the Claim (provided, however, the failure to provide such notice will only relieve Proofpoint of its indemnity obligations hereunder to the extent Proofpoint is prejudiced thereby); (ii) Customer tendering sole and exclusive control of the Claim to Proofpoint at the time Customer provides written notice of such Claim to Proofpoint; and (iii) Customer providing reasonable assistance, cooperation and required information with respect to defense and/or settlement of the Claim, including Customer providing Proofpoint with access to documents and personnel at Proofpoint's request and expense. Customer may at its sole expense participate in the Claim, except that Proofpoint will retain sole control of the defense and/or settlement. Proofpoint shall not agree to any settlement of a Claim that includes an injunction against Customer or admits Customer liability without Customer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

8.4. Exclusive Remedy. Subsection 8.1 of this Section 8 describes the sole and exclusive remedy of Customer and the entire liability of Proofpoint with respect to any Claim.

9. Intellectual Property Rights, Licenses and Authorizations

9.1. Ownership. Customer retains all title, intellectual property and other ownership rights in all Customer Confidential Information, Customer Data and all data that Customer makes available for processing by the Proofpoint Products. Customer warrants and covenants that Customer has the right to provide Customer Data and Personal Data to Proofpoint hereunder. Proofpoint retains all title, intellectual property and other ownership rights throughout the world in and to the Proofpoint Products, Documentation, any Professional Services and Managed Services and the Work Product and any modifications to, and derivative works of, the foregoing. Proofpoint hereby grants to Customer a non-exclusive, non-transferable, fully paid-up license to use the Work Product in connection with the Proofpoint Product licensed under the Agreement and solely for Customer's internal business purposes. Professional Services and/or Managed Services (and any resulting Work Product from either offering) are not provided on a "work made for hire" basis.

9.2. No Implied Rights. There are no implied rights and all rights not expressly granted herein are reserved. No license, right or interest in any Proofpoint trademark, copyright, patent, trade name or service mark is granted hereunder. Customer shall not remove from any full or partial copies made by Customer of the Software, Software Updates and Documentation any copyright or other proprietary notice contained in or on the original, as delivered to Customer.

9.3. Injunctive Relief. Each party acknowledges that the Proofpoint Products contain valuable trade secrets and proprietary information of Proofpoint, that in the event of any actual or threatened breach of the scope of any of the licenses granted hereunder, such breach shall constitute immediate, irreparable harm to Proofpoint for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach in addition to whatever remedies Proofpoint might have at law or under the Agreement.

9.4. Proofpoint Authorization and License. During the Term of the Agreement, Customer hereby (i) grants to Proofpoint and its service providers a worldwide, limited term license to collect and process certain Customer Confidential Information and Customer Data, and (ii) authorizes Proofpoint to collect and process certain Personal Data, for: (a) abuse, fraud and threat awareness, detection and prevention, (b) compliance, and (c) security purposes, in accordance with the Agreement. Customer acknowledges and agrees that development of Threat Analytics from Proofpoint's ecosystem is critical to the functionality of the Proofpoint Products. Customer hereby authorizes Proofpoint to collect Threat Analytics during the Term of the Agreement. Further, Customer hereby authorizes Proofpoint to use Threat Analytics worldwide to build, enhance, improve and maintain Proofpoint services; provided that if Customer provides written legal notice to Proofpoint on or after expiration or termination of the applicable Proofpoint Services instructing Proofpoint to delete any Personal Data included in Threat Analytics, it will be deleted within 18 months of such notice.

10. Limitation of Liability

10.1. EXCEPT FOR (i) INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS, (ii) DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, (iii) DAMAGES RESULTING FROM EITHER PARTY'S MATERIAL BREACH OF THE CONFIDENTIALITY SECTION, (iv) CUSTOMER'S BREACH OF THE CUSTOMER RESPONSIBILITIES SECTION, OR (v) CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S AGGREGATE LIABILITY UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUALIZED SUBSCRIPTION FEES PAID FOR THE APPLICABLE PROOFPOINT PRODUCT.

10.2. EXCEPT FOR (i) DAMAGES RESULTING FROM EITHER PARTY'S MATERIAL BREACH OF THE CONFIDENTIALITY SECTION, OR (ii) CUSTOMER'S BREACH OF THE CUSTOMER RESPONSIBILITIES SECTION, IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR COVER DAMAGES OR LOSSES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.3. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

11. General

11.1. Entire Agreement; Integration. The Agreement constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No amendment or waiver of any provision of the Agreement shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, any Purchase Order issued by Customer or Reseller shall be deemed a convenient order and payment device only and no terms (other than product name, license quantity, price, Subscription Term, and billing contact) stated in any Purchase Order shall be incorporated into the Agreement, and all such other terms shall be void and of no effect. In the event of any conflict between this Master Agreement, the Product Terms, a SOW (if applicable), and/or the applicable Purchase Order, the order of precedence will be the following: the applicable Product Terms, SOW(s), this Master Agreement, and then the applicable Purchase Order(s).

11.2. U.S. Government Users. Product and SaaS includes "Commercial Computer Software" and "Commercial Computer Software Documentation." In accordance with Section 12.212 of the Federal Acquisition Regulations (FAR) and Sections 227.7202-1 through 227.7202-4 of the Defense FAR Supplement (DFARS), any use, duplication, modification, distribution, disclosure and all other license rights of Product or SaaS by the U.S. Government or any of its agencies shall be governed by and subject to all of the terms, conditions, restrictions, and limitations of the Proofpoint license agreement. Use of Product or SaaS constitutes agreement by the U.S. Government that Product or SaaS includes "commercial computer software" and "commercial computer software documentation" per the FAR/DFAR; and renders the Proofpoint license agreement enforceable. If for any reason Product or SaaS is not considered 'commercial' per the FAR; or, the Proofpoint license agreement otherwise is deemed not to apply, the Product or SaaS will be deemed to be provided with "Restricted Rights" as defined in FAR 52.227-14(a) and FAR 52.227-14(g)(4) (Alt III), or DFARS 252.227-7014(a)(15) and DFARS 252.227-7014(b)(3), as applicable. For U.S. Government Users, the Government shall have the right to use, duplicate or disclose Technical Data which is accessed, developed, or delivered under the contract, for the acquiring agency's internal purposes only, per FAR 12.211 Technical data. For contracts government by the DFARS, the Government shall have the license rights for Technical Data as provided under DFAR 252.227-7015 (b)(Technical Data—Commercial Items).

11.3. Publicity. Neither party may issue press releases or otherwise publicize the parties' relationship without the other party's prior written consent.

11.4. Independent Contractors. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby.

11.5. Notices. All notices shall be in writing to the General Counsel of each party's address on the first page of the Agreement (or as updated by a party in writing to the other) and effective upon receipt.

11.6. Waiver. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, such 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 shall remain in effect.

11.7. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

11.8. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign the Agreement in its entirety upon written notice, without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party.

11.9. Export Restrictions. Each party agrees to comply with all applicable laws, regulations and requirements of the Export Administration Regulations ("EAR", 15 CFR Part 730 et seq.) and the regulations administered by the Treasury Department's Office of Foreign Assets Control ("OFAC regulations", 31 CFR Part 500 et seq.), as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the export, import, and use of the Proofpoint Products, Work Product and Proofpoint Confidential Information and any media. Customer represents and warrants that it is not, and will not, be listed on any U.S. government list of prohibited or restricted parties pursuant to the EAR and/or OFAC regulations.

11.10. Severability. If any clause of the Agreement shall be adjudged by any board, court or tribunal of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of the Agreement, which shall remain enforceable by the parties. For the avoidance of doubt, with respect to any Federal prime contract, subcontract, or end-user licensing agreement which incorporates Proofpoint's terms and conditions, those clauses that are specifically declared by Federal regulation not to be enforceable, shall be deemed deleted from the Agreement to the extent they are determined to be unenforceable.

11.11. Applicable Law. If Customer is in any country on the American continents, the Agreement will be governed by the laws of the State of California and the United States of America, without regard to conflict of law principles. The parties hereby irrevocably consent

to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California, for resolution of any disputes arising out of the Agreement. If Customer is in any country outside the American continents, the Agreement will be governed by the laws of England and Wales, without regard to conflict of law principles. In such case, the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the of the courts of England and Wales, for resolution of any disputes arising out of the Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

11.12. **Third-Party Beneficiaries.** There are no third-party beneficiaries under the Agreement.

12. DEFINITIONS

12.1. **"Affiliate"** means, with respect to a party, any entity which is directly or indirectly controlled by such party. "Control," for purposes of this definition, means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

12.2. **"Agreement"** means the Master Agreement, the Product Terms, the commercial terms of each Purchase Order, SOW (if any), and any other document executed by the parties.

12.3. **"Appliance(s)"** means a virtual or hardware device containing the Software.

12.4. **"Confidential Information"** means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" or the like, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of the Agreement (including pricing and other terms reflected in a Purchase Order), the Proofpoint Products business and marketing plans, technology and technical information, product designs, and business processes. "Confidential Information" shall not include information that (i) is or becomes a matter of public knowledge through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to the Receiving Party by a third party that lawfully and rightfully possesses such information without restriction on disclosure; (iv) the Receiving Party can document resulted from its own research and development, independent of receipt of the disclosure from the Disclosing Party; or (v) is disclosed with the prior written approval of the Disclosing Party.

12.5. **"Customer Data"** means the Customer specific configurations and rules implemented in the Proofpoint Products, and any Customer content processed by the Proofpoint Products (e.g., email text and attachments) that is not Personal Data.

12.6. **"Customer Equipment"** means Customer's computer hardware, software and network infrastructure used to access Software.

12.7. **"Documentation"** means the technical description of the Proofpoint Product(s) contained in the then-current Product Terms.

12.8. **"Extension Term(s)"** means each additional one-year (or other agreed upon period) Subscription Term for which the Subscription Term for a Proofpoint Product is extended pursuant to Section 7.

12.9. **"Initial Term"** means the initial Subscription Term for a Proofpoint Product that is defined on the applicable Purchase Order.

12.10. **"License(s)"** means the license metric (e.g., type and quantity) identified in the Proofpoint sales quote and/or in the applicable Product Terms (which in turn may be referenced in the Purchase Order). Customer needs a License in order to legally use a Proofpoint Product.

12.11. **"Managed Services"** means ongoing active management provided by Proofpoint to Customer on a subscription basis to manage either Proofpoint Products or third-party products licensed separately by Customer, as specifically set forth in an applicable Proofpoint managed services brief corresponding to such Managed Services.

12.12. **"Personal Data"** means data about an identifiable individual that is protected by privacy laws where the individual resides. Examples of personal data include name, religion, gender, financial information, national identifier numbers, health information, email addresses, IP addresses, online identifiers and location data. Proofpoint's protection of Personal Data is described in Section 4.

12.13. **"Product Terms"** means the descriptions of Proofpoint Products and related terms contained at www.proofpoint.com/license/product-exhibit that are hereby incorporated herein.

12.14. **"Professional Services"** means installation, implementation, data migration, configuration, or advisory services provided by Proofpoint to Customer.

12.15. **"Proofpoint Product(s)"** means the Appliance, Service or Software licensed and/or purchased by Customer under a Purchase Order.

12.16. **"Purchase Order(s)"** means an ordering document for a Proofpoint Product issued by Customer or Reseller that contains at least the following information: product name, license quantity, Subscription Term, price, and billing contact, all corresponding to the Proofpoint or reseller quote.

12.17. **"Reseller"** means a third-party authorized by Proofpoint to resell Proofpoint Products directly to Customer.

12.18. **"Service"** means any Proofpoint Product licensed on a hosted basis as software-as-a-service.

12.19. **"Software"** means any Proofpoint binary software programs licensed by Proofpoint to Customer, together with all the Software Updates.

12.20. **"Software Update(s)"** means each Software update and enhancement that Proofpoint generally makes available at no additional charge to its customers who are current in payment of applicable Subscription Fees, or otherwise provides to Customer under the Agreement.

12.21. **"SOW"** means each statement of work, engagement letter or other writing signed by Proofpoint and Customer that describes the Professional Services and/or Managed Services provided by Proofpoint. Each SOW shall reference the Agreement and will be subject to the terms and conditions hereof. Additionally, a Proofpoint service brief identified in a Purchase Order is also considered a SOW but does not require a separate signature.

12.22. **"Subscription Fees"** mean the fees paid by Customer for the right to use (and receive applicable Updates to) the applicable subscription-based Proofpoint Products for the Initial Term or Extension Term, as applicable.

12.23. **"Subscription Term"** means the term during which Customer receives a license to use the applicable Proofpoint Products.

12.24. **"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

12.25. **"Term"** means the Initial Term and any Extension Term applicable to each Purchase Order.

12.26. **"Threat Analytics"** means information collected, generated and/or analyzed by the Proofpoint Products such as log files, statistics, aggregated data and derivatives thereof.

12.27. **"User"** means Customer's and its Affiliates' employees, agents, subcontractors, consultants or other individuals authorized hereunder to use the Proofpoint Product.

12.28. **"Work Product"** means all work product developed or created by Proofpoint during the course of providing support, Managed Services or Professional Services to Customer. Notwithstanding anything herein to the contrary, Work Product shall not include any Customer Confidential Information, Customer Data, or Personal Data.

CUSTOMER:	PROOFPOINT, INC.:
<i>Signature:</i>	<i>Signature:</i>
Individual Signing: [print name]	Individual Signing: [print name]
Title:	Title:
Signing Date:	Signing Date: