



## PROOFPOINT CUSTOMER AGREEMENT FOR MICROSOFT COMMERCIAL MARKETPLACE

Unless Customer has a signed written agreement with Proofpoint covering the applicable Proofpoint Products, this Proofpoint Customer Agreement for Microsoft Commercial Marketplace (“**Agreement**”) governs your use and access of the Proofpoint Products licensed to you through your order on the Microsoft commercial marketplace (“**Purpose**”). By executing an order or otherwise by using the Proofpoint Products, you and any entity on whose behalf you are acting (“**Customer**,” “**you**,” or “**your**”), agree that your use and access of the Proofpoint Products is governed by the terms of this Agreement, which contains terms regarding license and usage, disclaimers and limitations of liability, Proofpoint’s right to suspend or terminate Customer’s subscription for non-payment, and automatic renewal of the subscription. PROOFPOINT MAY CHANGE OR DISCONTINUE ANY PROOFPOINT PRODUCT OFFERED THROUGH THE MICROSOFT COMMERCIAL MARKETPLACE OR CHANGE OR REMOVE PROOFPOINT PRODUCT APIs, FEATURES OR FUNCTIONALITY FROM TIME TO TIME.

### 1. License Terms

1.1. Customer License. Proofpoint Products are licensed and not sold. Subject to the terms of this Agreement, Proofpoint grants to Customer a worldwide (subject to Sections 11.2 and 11.8), non-exclusive, time-limited, non-sublicensable, non-transferable (except as otherwise set forth herein), limited license to access and/or use (as applicable) the Proofpoint Products during the Term in the quantities of Licenses specified in the applicable Proofpoint quote and offer through the Microsoft commercial marketplace and subject to any limitations set forth in the applicable quote and offer, solely for Customer’s own internal business purposes.

### 1.2. Warranties, Remedies and Disclaimers.

1.2.1 Each party warrants that (i) it has the legal power to enter, and perform under, this 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 this 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 or 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 THIS 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 may provide 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, if any.

## 2. **Customer Use and Responsibilities**

2.1. Customer Use. Customer will use the Proofpoint Products in accordance with this Agreement and License restrictions and will not make the Proofpoint Products available to third parties without the express written consent of Proofpoint, except for Affiliates, consultants and advisors using Proofpoint Products solely for the benefit of Customer. Customer is liable for all acts and omissions of the third parties and/or Affiliates. Customer may use the Documentation in connection with the License granted hereunder.

2.2. Restrictions. Customer shall not, and shall not permit any third parties to: (i) directly or indirectly infringe, misappropriate, or violate the intellectual property, publicity, or privacy rights of Proofpoint or any third party; (ii) violate any law, statute, ordinance, or regulation (including, without limitation, the laws and regulations of unfair competition, anti-discrimination, or false advertising); (iii) propagate any viruses, worms, Trojan horses, or other programming routine intended to damage or disrupt any system or data; (iv) resell, sublicense, lease, time-share, or otherwise make the Proofpoint Products available to a third party, except as expressly permitted in this Agreement or under Section 2.3; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Proofpoint Products or the data contained therein, or the related systems or networks (including, but not limited to, hacking or penetration testing Proofpoint's systems); (vi) modify, copy, translate, or create derivative works of the Proofpoint Products; (vii) decompile, disassemble, reverse engineer, unlock, or otherwise attempt to discover the source code, underlying algorithms, or technical information of the Proofpoint Products, in whole or in part; (viii) access the Proofpoint Products for the purpose of developing or using it in connection with a competitive product or service, or copying its features or user interface; (ix) use or access the Proofpoint Products for the purposes of product evaluation, benchmarking, or other comparative analysis without Proofpoint's prior written consent; (x) use the Proofpoint Products to operate a service bureau or for the

benefit of any third party; (xi) remove or alter any proprietary notices or labels on the Proofpoint Products or Documentation; or (xii) file copyright or patent applications that include the Proofpoint Products or Documentation, or any portion thereof.

2.3 Use of Proprietary Data with Third Parties. Customer shall not disclose, share, or provide access to the Proprietary Data to any third party without Proofpoint's prior written authorization. Proofpoint may audit Customer's compliance with Section 2 upon reasonable notice. If Proofpoint determines that either the Customer or its third party is not in compliance with Section 2, Proofpoint may immediately suspend or revoke its authorization for the third party's use and access of the Proprietary Data. Customer shall cooperate with and assist Proofpoint in enforcing its rights under Section 2. Customer shall ensure that any third party accessing Proprietary Data on its behalf: (a) enters into written confidentiality obligations with the Customer that are no less restrictive with respect to Proofpoint's rights than those set forth in this Agreement; (b) does not use the Proprietary Data to train, develop, test, or improve any artificial intelligence, machine learning, or similar technologies, or for any competitive development purposes; and (c) uses the Proprietary Data only in compliance with applicable laws or regulations and this Agreement. Upon the termination or expiration of (i) this Agreement, (ii) the permitted use, or (iii) the applicable Subscription Term for the Proofpoint Product from which the Proprietary Data is derived or accessed, Customer shall ensure that use of the Proprietary Data by Customer and its third parties is immediately ceased and the Proprietary Data is returned or permanently destroyed, including any copies, derivatives, or materials incorporating such data, regardless of format, to the extent commercially reasonable. Customer shall certify its compliance with this Section 2.3 upon Proofpoint's request.

### **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 outside the Purpose and scope of this 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. This 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 this 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 Customer 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 this 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 this 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. Customer is responsible for payment of the Subscription Fees, any fees for the offerings, and all other fees set forth in the applicable Proofpoint quote and offer through the Microsoft commercial marketplace (collectively, the "**Fees**"). The Subscription Fees are effective only for the Subscription Term listed on the applicable quote and offer. The fees for any Extension Term will be specified in the applicable Proofpoint renewal quote and offer.

5.2. Taxes. Customer shall pay all Taxes that are levied upon and related to the performance of obligations or exercise of rights under this 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, territory, or governmental or quasi-governmental entity, will be equal to the amounts specified on the applicable Proofpoint quote. In no event will either party be responsible for any taxes levied against the other party's net income.

5.3. Payment. Orders for Proofpoint Products will be invoiced by and subject to additional terms and conditions between you and your Reseller and/or the Microsoft commercial marketplace. Upon default by Customer, Proofpoint will have all remedies available at law or equity. Proofpoint reserves the right to collect payment from you directly in any case where the Reseller and/or Microsoft commercial marketplace does not receive or is unwilling to collect the Fees. In such case, payment is due to Proofpoint immediately and subject to 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. Failure to make timely payment may result in immediate termination of access to the Proofpoint Products and/or cessation of provision of Applied Services and/or Professional Services. No refunds will be made except as specified herein.

5.4. License True-Up. Proofpoint reserves the right to separately invoice Customer for any License True-Up as follows: 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 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](mailto: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 the Microsoft commercial marketplace (and Proofpoint will invoice Customer, or Reseller or the Microsoft commercial marketplace, as applicable), 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.

5.5. 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, Applied Services and Professional Services**

6.1. Proofpoint shall provide support and/or Applied Services provided Customer is current in payment of the applicable Subscription Fees and any additional fees for support and/or Applied 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 Applied Services, if any, specified in one or more SOWs. All Professional Services and/or Applied Services shall be billed as stated in the applicable SOW and Customer agrees that, if Customer has not used the Professional Services and/or Applied Services within one (1) year of paying for such Professional Services and/or Applied 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 Applied 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 Applied Services and/or Professional Services, as applicable, or, if Proofpoint is unable to do so, terminate the applicable Applied Services and/or SOW and refund that portion of any fees paid to Proofpoint that correspond to the allegedly defective Applied Services and/or Professional Services.

## **7. Term, Termination and Expiration**

7.1. Unless otherwise set forth in the applicable Product Terms or applicable Proofpoint quote and offer through the Microsoft commercial marketplace, the Initial Term applicable to each Proofpoint quote and offer through the Microsoft commercial marketplace commences on the later of: (i) the date Proofpoint ships a production Appliance to Customer, (ii) the date Proofpoint processes the acceptance of the applicable quote and offer through the Microsoft commercial marketplace 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). Proofpoint reserves the right to reject any Microsoft commercial marketplace order for any reason. Upon expiration of the Initial Term and any Extension Term(s) under each applicable Proofpoint quote and offer through the Microsoft commercial marketplace, 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 this Agreement or any 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 Customer Agreement immediately by written notice if no order is in effect.

7.4. On termination or expiration of this Agreement, all Software licenses, Service access, Applied Services access and/or Professional Services fulfillment granted under this Agreement shall automatically terminate with immediate effect. In the event of the termination or expiration of this Agreement, the provisions of this Agreement which by their nature extend beyond the expiration or termination of this Agreement shall survive, including but not limited to Section 2 ("Customer Use and 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 this 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 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 this 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, Customer Personal 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 Confidential Information, Customer Data, and Customer Personal Data to Proofpoint for the business purposes of this Agreement. Proofpoint retains all title, intellectual property, and other ownership rights throughout the world in and to the Proofpoint Products, Documentation, Threat Analytics, Professional Services, Applied Services, 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 Products licensed under this Agreement and solely for Customer's internal business purposes. Professional Services and/or Applied 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 this Agreement.

9.4. Proofpoint Authorization. Customer acknowledges and agrees that Proofpoint Products are designed to protect its customers against cybersecurity threats, data loss, and compliance risks, and it is critical for Proofpoint to maintain and continue developing its products and services to protect its customers from such threats, loss, and risks. In accordance with Recital 49 of the GDPR and in support of the business purposes of this Agreement, Customer hereby authorizes Proofpoint and its subprocessors to collect and process Customer Data and Customer Personal Data to provide the Proofpoint Products in accordance with this Agreement and to use Customer Data and Customer Personal Data in connection with Threat Analytics.

## 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 USE AND RESPONSIBILITIES SECTION, OR (v) CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUALIZED SUBSCRIPTION FEES RECEIVED BY PROOFPOINT 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 USE AND 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 THIS 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. This 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 this 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 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 this Agreement, and all such other terms shall be void and of no effect. In the event of any conflict between this Customer 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 Customer 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 governed 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 this 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 this 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. Each party may not 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 this 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. Anti-corruption Laws, Export Controls. Each party will comply with applicable (i) anti-corruption and anti-bribery laws including the United States (US) Foreign Corrupt Practices Act, and (ii) all applicable export / import laws and regulations (collectively "Export Law") to ensure that the Proofpoint Products, support, Professional Services, and/or Applied Services are not (a) directly or indirectly violating Export Law or (b) used for any purposes prohibited by Export Law. The parties represent and warrant that no government agency has suspended, revoked, or denied its export privileges and are not subject to sanctions, are not designated on any list of prohibited or restricted parties (including the lists maintained by the United Nations, US Government, the European Union or its member states, or other applicable government authority), and do not maintain its operations in any country subject to such sanctions. Customer agrees that it will not export, re-export, or transfer the Proofpoint Products, support, Professional Services, and/or Applied Services or their related documentation, in whole or in part, to any person, entity, or country subject to applicable export restrictions or otherwise prohibited by Proofpoint in its sole discretion.

11.10. Severability. If any clause of this 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 this 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 this Agreement to the extent they are determined to be unenforceable.

11.11. Applicable Law. If Customer is in any country on the American continents, this 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 this Agreement. If Customer is in any country outside the American continents, this 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 this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11.12. Third-Party Beneficiaries. There are no third-party beneficiaries under this 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 Customer Agreement, the Product Terms, the commercial terms of each applicable quote and offer if accepted, 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. **“Applied 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 applied services brief corresponding to such Applied Services

12.5. **“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 this Agreement (including pricing and other terms reflected in the applicable Proofpoint quote and offer through the Microsoft commercial marketplace), 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.

12.6. **“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. Proofpoint’s protection of Customer Data is described in Section 4.

12.7. **“Customer Equipment”** means Customer’s computer hardware, software and network infrastructure used to access Software.

12.8. **“Documentation”** means the technical description of the Proofpoint Product(s) contained in the then-current Product Terms.

12.9. **“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.

12.10. **“Initial Term”** means the initial Subscription Term for a Proofpoint Product that is defined on the applicable Proofpoint quote and offer through the Microsoft commercial marketplace.

12.11. **“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 applicable quote and offer through the Microsoft commercial marketplace). Customer needs a License in order to legally use a Proofpoint Product.

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 Customer 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](http://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 the applicable Proofpoint quote and offer through the Microsoft commercial marketplace.

12.16 **“Proprietary Data”** means any Proofpoint confidential or sensitive information related to Proofpoint's products, services, models, and analytics that is not publicly available and is protected by Proofpoint through reasonable security measures, such as confidentiality terms, data sharing agreements, API Terms of Use, controlled access, and corporate policies. Proprietary Data includes, but is not limited to, strategic plans, product development data, Proofpoint’s Confidential Information, Threat Analytics, Work Product, software, databases, application programming interfaces (APIs), data derived from program operations, such as visualizations, summary data tables, and findings, as well as any confidential data related to cybersecurity threat research and responses, and any other data or information that provides a competitive advantage or is critical to Proofpoint’s operations and the current and future value of the business. Proprietary Data does not include Customer Data or Personal Data.

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 this 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 Applied Services provided by Proofpoint. Each SOW shall reference this Agreement and will be subject to the terms and conditions hereof. Additionally, a Proofpoint service brief identified in the applicable Proofpoint quote and offer through the Microsoft commercial marketplace 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 applicable Proofpoint quote and offer through the Microsoft commercial marketplace.

12.26. "**Threat Analytics**" means the output and/or derivatives from the collection, analysis, combination, generation, and/or aggregation of the data (including Customer Data and Customer Personal Data) processed by Proofpoint for the purpose of identifying, detecting, preventing, and/or remediating actual or potential compromise(s) to the security, availability, integrity, and/or confidentiality of its customers' data and the environments in which this data resides.

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, Applied 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.