

## END USER LICENSE TERMS

The following terms apply to each GSA Customer ("Customer") license of Proofpoint Products from the GSA Multiple Award Schedule Contractor ("Reseller" or "MAS Contractor") under the GSA Schedule Contract:

**"Proofpoint Products"** means the appliance, service or software listed in the GSA Contractor's Schedule Price List by and licensed by Customer from Proofpoint Inc. ("Proofpoint") pursuant to a GSA Customer Purchase Order ("Order").

**"Documentation"** means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer's purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

**"Mailbox"** means a separate account on Customer's e-mail server for sending or receiving messages or data within Customer's e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer's email server for the receipt of messages or data within Customer's e-mail system or network. For Proofpoint Product Social Archive and/or Governance, "Mailbox" hereunder shall be deleted and replaced with **"Named User"**.

**License.** Customer is granted a limited term, non-sublicensable, non-transferable, and non-exclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer's internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer's right to access or use Proofpoint Products is limited to those parameters set forth in the applicable Order provided to Proofpoint including, but not limited to the maximum number of Mailboxes ("Licensed Mailbox Count") (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

### **License Restrictions.**

Customer will not and will not allow any third party to:

- a) copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;
- b) reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;
- c) remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;
- d) sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products;
- e) export any Proofpoint Products in violation of U.S. laws and regulations;
- f) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;
- g) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;

- h) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer's organization without Proofpoint's prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person's image, identity, and likeness) or privacy; (c) violation of any federal 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); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or Documentation or any portion thereof; or
- i) upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

**Customer Responsibilities.** Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) and service providers (if applicable) in managing its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer's data, or where Customer's use of the Proofpoint Products are in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to register to use the Secure Share. For the purposes of Proofpoint's compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer's direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.

If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.

**Support and Service Levels.** For Customers who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint's standard support terms which are currently described on Exhibit A.

**Reporting.** Customer is under no obligation to increase the number of Mailboxes its uses for subscription based Proofpoint Products based on Mailbox count. However, Customer understands and agrees that if Customer adds Mailboxes to the Licensed Mailbox Count for such Proofpoint Products that exceed 10 percent of the Licensed Mailbox Count, Reseller or MAS Contractor shall invoice Customer for the additional mailboxes.

Customer shall also audit its Mailbox count on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Licensed Mailbox Count, Reseller or MAS Contractor shall invoice Customer for the additional mailboxes.

**Warranty Disclaimer.** PROOFPOINT DISCLAIMS (AND PROOFPOINT IS ALSO REQUIRED UNDER ITS CONTRACTS WITH ITS SUPPLIERS AND LICENSORS TO STATE THAT SUCH SUPPLIERS AND LICENSORS ALSO DISCLAIM) ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THAT THE ACCURACY OF THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF MANAGEMENT OF ANY DOCUMENT, OR THAT NO DOCUMENT WILL BE LOST. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**Disclaimer of Liability.** All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint's negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

**Proofpoint Contract Rights.** Proofpoint shall have the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

**Law.** This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

**Force Majeure.** Pursuant to GSAR 552.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party's reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

**Open Source Software: Proofpoint Appliance/Software for Customer On-Site Deployment.** Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:

**“Open Source Software”** means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer’s name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

**Proofpoint Product - Email Archive.** Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

**Termination.** When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Proofpoint and the GSA Schedule Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer or a court of competent jurisdiction. Within thirty (30) days after expiration or termination of the License to use the Proofpoint Product, Customer shall: (i) certify in writing to Proofpoint that all copies of the Software, Software Updates, and Documentation in any form, including partial copies or extracts thereof, have been destroyed or returned to Proofpoint, and (ii) retrieve or dispose of Customer data from or within the Proofpoint Products and/or systems. Upon 30 days of termination of the License to use the Proofpoint Product, Customer data in the Proofpoint Product and/or systems may be rendered illegible, deleted or written over, including any back-up Customer data.

## EXHIBIT A

### SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS

**Overview:** The support services described herein are provided by Proofpoint to each GSA customer (“Customer”) pursuant to the terms and conditions of the applicable license agreement (“Agreement”) between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

**1. Bronze Support** services consist of the following:

**1.1 Error Corrections.** Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

**1.2 Software and Documentation Updates.** Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, “Updates”). Updates do not include products or options that are designated by Proofpoint as new products or options for which Proofpoint charges a separate fee. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on its support website.

**1.3 Support Requests and Named Support Contacts.** Technical support is available during the technical support hours for the primary support center specified on the Product Order Form. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Technical support hours for Europe are Monday through Friday, 04:00 UTC to 19:00 UTC (e.g. 05:00am CET to 08:00pm CET during standard time and excluding Proofpoint holidays). Technical support hours for Asia Pacific are Sunday through Thursday 21:00 UTC to 12:00 UTC (e.g. Monday through Friday 06:00am JST to 09:00pm JST during standard time and excluding Proofpoint holidays). Technical support hours for the Middle East are Saturday through Thursday 03:00 UTC to 15:00 UTC (e.g. 07:00am GST to 07:00pm GST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint’s web-based call submission and tracking system (“CTS”) at any time. Support request submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer’s operating environment and operation of the Proofpoint Products (collectively, “Named Support Contacts”). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer’s cases on CTS at any time.

**1.4 Platinum Support.** In addition to the Bronze support services defined above, for an additional charge, Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint, 24x7, 365 days per year; and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support hours specified in Section 1.3 above.

**1.5 Premium Support.** In addition to the Bronze and Platinum support services defined above, for an additional charge, (i) Customer shall receive (i) two additional Named Support Contacts (for a total of six) and (ii) Proofpoint will assign a designated Technical Account Manager to Customer’s account.

**1.6 Global Time Zone Add On.** Any Customer that has purchased support at the Platinum level or higher, may purchase the Global Time Zone Add On. For an additional charge, Customer shall receive six additional Named Support Contacts (for a total of twelve) and Proofpoint shall provide assistance for errors of any priority, as reasonably determined by Proofpoint, 24x7, 365 days per year; and (ii) a dedicated phone line.

**1.7 Named Support Contact Training.** In order to receive support in accordance with the foregoing, within ninety days of the Effective Date, all Named Support Contacts must take and pass exam(s), as applicable and available, to become an “Accredited Engineer” for each Proofpoint Product licensed by Customer. If any Named Support Contact fails to pass the exam, Proofpoint may reasonably request that such Named Support Contact be replaced by Customer. Failure to pass the applicable exam(s) may result in limited access to CTS.

## **2. Priority Levels of Errors and Responses**

In the performance of Support services, Proofpoint will apply the following priority ratings.

### **2.1 Priority I Errors.**

A "Priority I Error" means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

### **2.2 Priority II Errors.**

A "Priority II Error" means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

**2.3 Priority III Errors. Description:** A "Priority III Error" means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

### **2.4 Priority IV Errors.**

A "Priority IV Error" means a Software program error which prevents some function or process from substantially meeting the Documentation but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next Software update.

## **3 Customer Cooperation.**

Proofpoint's obligation to provide Support services is conditioned upon the following: (i) Customer's reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer's provision to Proofpoint of sufficient information and resources to correct the problem, including, without limitation, remote access as further discussed in these policies, (iii) Customer's prompt installation of all Software maintenance releases, bug fixes and/or work-around supplied by Proofpoint, and (iv) Customer's procurement and installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint's response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services and for purposes relating to providing Support to Customer, Proofpoint may obtain information regarding Customer's e-mail communications and Customer agrees that Proofpoint may use any statistical data generated relating to Customer's e-mail. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

## **4. Reproducing Problems; Remote Access.**

Subject to the applicable Support services fees, Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. Where applicable for a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint's obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer's computer system(s) and network. Any such remote access by Proofpoint shall be subject to Proofpoint's compliance with Customer's security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer's failure to provide the foregoing remote access shall extend the response

time periods set forth in Section 2 accordingly and resolution of the problem may be subject to payment of additional fees. Prior to proceeding with work that will be subject to additional fees, Proofpoint will notify Customer and will not start such work until Proofpoint receives authorization from Customer. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

## **5. Support Services Conditions.**

**5.1 Support Issues Not Attributable to Proofpoint.** Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer's negligence, hardware malfunction, or third-party software. In the event Proofpoint provides Support services for problems caused by any of the above, Customer will reimburse Proofpoint for such services at the then-current time and materials rate. Proofpoint shall be entitled to discontinue Support services in the event of Customer's non-payment of Subscription Fees when due.

### **5.2 Exclusions from Support services.**

The following items are excluded from Support services:

- (a)** In-depth training. If the Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint's training or consulting departments.
- (b)** Assistance in the customization of the application. Support services do not include providing assistance in developing, debugging, testing or any other application customization
- (c)** Information and assistance on third party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.
- (d)** Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer's environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided for an additional fee.
- (e)** Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes.

If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed SOW.

## **6. Description of Appliance Support Services.**

### **6.1 Services.**

For as long as the Appliance purchased by Customer is under Proofpoint's Appliance warranty, Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site, depending on Customer's location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

### **6.2 Customer Obligations.**

Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer's Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating Appliance. It is Customer's responsibility to back up the data on Customer's system, and to provide adequate security for Customer's system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer's computer or network systems. Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer's facilities necessary for Proofpoint to fulfill its obligations.

### **6.3 Exclusions.**

Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.