Situation	You need information contained in the End User License Agreement, such as: • Definitions • Supply of Service/Grant of License • End Users Obligations • Charges and Payments • Proofpoint Warranties • Limitation of Liability • Country Unique Terms • And much more
Solution	Search and/or review the below End User License Agreement for the specific information you need.

Proofpoint Essentials End User License Agreement

Last Modified Date: July 7, 2020

Welcome to Proofpoint! The following terms and conditions, together with any documents they expressly incorporate by reference (collectively, this ***"Agreement"***), governs the activities of anyone using and/or accessing Proofpoint Essentials, including Proofpoint Essentials – Security Awareness (collectively, “Proofpoint Essentials”), including Channel Partners that access the Services for purposes of provisioning Proofpoint Essentials to end users (***"you"*** or ***"End User"***) and is entered into with Proofpoint, Inc., Proofpoint NI Limited, or any other applicable Proofpoint wholly owned subsidiary (***"Proofpoint"***). Please read this Agreement before you use or access Proofpoint Essentials. If you accept or agree to this Agreement on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to this Agreement and, in such event, ***"you"*** and ***"your"*** will refer and apply to that company or other legal entity. By clicking to accept or agree to this Agreement when this option is made available to you, you represent and warrant that you have read, understand, have the legal capacity to, and hereby agree to be legally bound by these terms and conditions. If you have entered into a separate written agreement with Proofpoint, that written agreement will govern your relationship with Proofpoint. Proofpoint may revise and update this Agreement from time-to-time in its sole discretion by posting such modifications to this Agreement on the administrative interface webpage for provisioning of Proofpoint Essentials with the effective date posted on the top of the Agreement, "Last Modified Date”. Your continued activity/access as an End User of Proofpoint Essentials following the posting of the revised Agreement means that you accept and agree to the changes. If the modified Agreement is not acceptable to you, your only recourse is to cease using Proofpoint Essentials and being an End User. All changes are effective immediately when Proofpoint posts them and apply to all End User activities thereafter.

If you are using Proofpoint Essentials for evaluation purposes, your use of Proofpoint Essentials is only permitted on a limited user deployment basis and for the period of time limited by the authorized evaluation period. Notwithstanding any

other provision in this Agreement, an evaluationlicense for Proofpoint Essentials is provided “AS-IS” without indemnification, warranty, obligation to provide support, of any kind, express or implied.

Recitals

Proofpoint Essentials provides an email filtering, management, and compliance service offering inbound and outbound email traffic management at the internet level, email continuity, email archiving, and other related security awareness and training services. The Service may be formed

from the following elements: (1) Spam and phishing email detection and blocking; (2) Virus and malware email detection and blocking; (3) Content control; (4) Emergency Inbox email continuity; (5) Transport Level Security, (6) Journal-based email archiving and (7) security awareness training.

1. 1. Definitions

o 1.1 "Active Users" means the number of users provisioned on the Service for purposes of email filtering, receive security awareness training or interface access and as counted by the Service. Aliases, distribution groups and other functional accounts are not counted so long as they are properly configured as such in the Service.

o 1.2 “Billed Users” means the number of users billed for the Service for the month. For Proofpoint Essentials – Security Awareness, the “Billed Users” means the greater of the 25 Active Users or the number of Active Users shown on the account on the 19th of each month. For Proofpoint Essentials – Email Security, the “Billed Users” means the number of Active Users shown on the account on the 19th of each month.

o 1.3 "Channel Partner": means a third-party authorized by Proofpoint to resell and/or provide the Service to End User.

o 1.4 "Confidential Information" has the meaning set forth in Section 10.
o 1.5 "Mailbox" means a separate account on End User’s e-mail server for sending or receiving messages or data within End User’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 End User’s email server for the receipt of messages or data within End User’s e-mail system or network.
o 1.6 "Open Relay": means an email server configured to receive email from an unknown or unauthorized third party and forward the email to one or more recipients that are not users of the email system to which that email server is connected. Open Relay may also be referred to as "spam relay" or "relay";

o 1.7 "Purchase Order" means an ordering document for the Service(s) and may take the form of a purchase order issued by End User or Channel Partner to Proofpoint. Each Purchase Order shall reference this Agreement and will be subject to this Agreement.

o 1.8 "Service(s)" means any Proofpoint products licensed on a hosted basis as software as a service under this Agreement pursuant to the Purchase Order. A general description of the available Service(s) is provided herein under the Recitals section.

o 1.9 "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.

o 1.10 *“Threat Analytics”* means information collected, generated and/or analyzed by Proofpoint Essentials such as log files, statistics, aggregated data and derivatives thereof.

2. 2. Supply of Service and Grant of License

o 2.1 Subject to the terms and conditions of this Agreement, Proofpoint hereby grants to the End User a non-exclusive, non-transferable, limited term right to use the Service for the permitted number of Active Users for the term, and solely for End User’s own internal business purposes.

o 2.2 As between End User and Proofpoint, End User is responsible for all activities conducted by its users under its Mailbox accounts. End User specifically agrees to limit the use of the Services to those parameters set forth in the applicable Purchase Order. Without limiting the foregoing, End User specifically agrees not to: (i) resell, sublicense, lease, time-share or otherwise make the Services available to any third party; (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Service or the data contained therein; (iii) modify, copy or create derivative works based on a Service; (iv) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from a Service, in whole or in part; (v) access a Service for the purpose of building a competitive product or service or copying its features or user interface; (vi) use a Service, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the End User organization without Proofpoint's prior written consent; (b) infringement on the intellectual property rights of any third party or any rights of publicity or privacy; (c)(d) filing copyright or patent applications that include the Services.

o 2.3 Suspension of Services.

▪ a. Proofpoint reserves the right both prior to the provisioning of the Service and at any time during the supply of the Service to test whether the End User's systems allow Open Relay. If at any time the End User's systems are found to allow Open Relay, Proofpoint will inform the End User and reserves the right to withhold provision of or suspend all or part of the Service immediately and until the problem has been resolved.

▪ b. If at any time the End User's email systems are found to be being used for bulk email or spam, Proofpoint will inform the End User and reserves the right to withhold provision of or suspend all or part of the Service immediately and until such use is terminated.

▪ c. If at any time continued provision of the Service would compromise the security of the Service due, without limitation, to hacking attempts, denial of service attacks, mail bombs or other malicious activities either directed at or originating from the End User's domains the End User agrees that Proofpoint may temporarily suspend Service to the End User. In such an event, Proofpoint will promptly inform the End User.

▪ d.Proofpointreservestherighthavinggiventhe End Userseven(7)daysprior written notice to temporarily suspend Service to the End User in cases of late or non-payment of Proofpoint and/or Channel Partner invoices.

- e.ShouldtheServicebesuspendedorterminatedforanyreasonwhatsoever, Proofpoint shall reverse all configuration changes made upon provisioning the Service and it shall be the responsibility of the End User to undertake all other necessary configuration changes to their mail servers, and to inform their ISP of the need to reroute inbound email.

o 2.4 End User acknowledges and agrees that Proofpoint may provide the Service from any datacenter forming part of the Service anywhere in the world and may, at anytime, transfer the provision of the Service from one installation to another. Proofpoint does not guarantee that any such installation, or part thereof, is dedicated to the sole use of the End User. If you are based in the United States then the Services will generally be provided from a datacenter within the United States, including any datacenter used for purposes of system failover. If you are based in the United Kingdom or a country in the European Union then the Services will generally be provided from a datacenter in a country within the European Union, including any datacenter used for purposes of system failover.

o 2.5 In order to fulfill its obligations in managing the Service, Proofpoint may at any time amend the Service and any documentation relating thereto for any reason including, but not limited to: legal; safety; business; or technical considerations.

o 2.6 The End User understands that the Service is supplied for an entire domain and can only be used by a full internet domain. The End User further undertakes to register all required email addresses with the Proofpoint platform and understand that non-registered email address will not be accepted by Proofpoint.

3. 3. End User's Obligations

o 3.1 In consideration of Proofpoint supplying the Service to the End User, the End User shall pay Proofpoint charges (in accordance with Section 4) or Channel Partner charges.

o 3.2 The End User will provide Proofpoint with all contact information, technical data and all other information Proofpoint may reasonably request from time to time to allow Proofpoint to supply the Service to the End User and all Mailboxes at its registered domains. All information the End User supplies will be complete, accurate and given in good faith. Such information will be treated as End User Confidential Information under the terms of this Agreement.

o 3.3 The End User shall not allow the products to:

- 3.3.1 Act as an Open Relay, or

- 3.3.2 SendorreceiveBulkEmailorfacilitatethemachinegeneratedmessage delivery of bulk or unsolicited emails or e-mails sent from an account not assigned to an individual; or

- 3.3.3 Send Spam or propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; Should the End User fail to meet these obligations in connection to End User’s email platform, in addition to Proofpoint rights to suspend all or part of the Service, Proofpoint reserves the right to charge the End User at Proofpoint' then current professional services rates for any remedial work which becomes necessary as a direct result of the End User's failure to meet these

obligations.3.4 The End User recognizes that information sent to and from the End User will pass through the Service and accordingly the End User agrees that the End User will use the Service for legitimate business purposes and:

▪ 3.4.1. comply with all relevant legislation and not violate 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);

▪ 3.4.2. conform to the protocols and standards applicable to the Internet; and

▪ 3.4.3. indemnify Proofpoint against any liability to third parties resulting from information passing through the Service from the End User.

▪ 3.5 The End User agrees that the End User will not use the Service for any unlawful purpose or in breach of any laws. These prohibited uses include, but are not limited to:

▪ 3.5.1 civil and criminal offences of copyright and trademark infringement; or

▪ 3.5.2 transmission or display or posting to a bulletin board of obscene, indecent or pornographic material; or

▪ 3.5.3 commission of any criminal offence; or

▪ 3.5.4 any transmission or display or publication of any material which is of a defamatory, offensive, abusive, or menacing character to any other person;

▪ 3.5.5 transmissionordisplayorpublicationofanymaterialinbreachoftheany rules, laws or regulations dealing with data protection or similar legislation in any other country or of any material which is confidential or is a trade secret; or

▪ 3.5.6 use of the Service in any manner which is a violation or infringement of the rights of any individual, organization or company anywhere worldwide.

▪ 3.6 The End User agrees to indemnify Proofpoint against all and any losses, costs and expenses Proofpoint may incur as a result of any breach by the End User of Section 3.5 of this Agreement. In addition to Proofpoint's termination rights set out in Section 9 below, Proofpoint may, at any time and at Proofpoint sole option, suspend the all or part of the Service until the End User gives suitable undertakings and provides security in terms satisfactory to Proofpoint to comply with the End User's obligations hereunder or terminate the Service if the End User is in breach of any of the obligations set out herein.

▪ 3.7 End User or Channel Partner shall not use the Service’s alias functionality to consolidate multiple Mailboxes under a single Active User. At no time should the number of Active Users be less than the number of Mailboxes being actively scanned by the Service.

o 3.8 For Proofpoint Essentials – Security Awareness, the End User may upload and include in the training modules and simulated phishing email campaigns customized content (“Custom Content”) to tailor the

training experience for the needs of End User's workforce; provided, however, that the Custom Content feature is enabled in the version that End User has licensed. End User represents and warrants that it has the right to distribute, reproduce, publish, upload, use the Custom Content.

o 3.9 End User acknowledges and agrees that development of Threat Analytics from

Proofpoint's ecosystem is critical to the functionality of Proofpoint Essentials. End User hereby grants a worldwide license to Proofpoint to collect Threat Analytics. Further, End Customer hereby grants a worldwide license to Proofpoint to use Threat Analytics to maintain, improve and enhance Proofpoint Services; provided that if End 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. This Section 3.9 survives termination and expiration of the Agreement.

4. Charges and Payment. The following terms and conditions only apply to End Users that purchase directly from Proofpoint.

o 4.1 The charges to be paid by the End User directly to Proofpoint for the Service are shown on the End User invoice issued by Proofpoint. If no charges are shown in the End User invoice then applicable charges to be paid are at the Channel Partner's specific pricing offered to the End User, or Proofpoint's then current standard list price rates. No refunds will be made.

o 4.2 Charges for the Service shall relate to the number of provisioned users that are invoiced by Proofpoint or Channel Partner ("Licensed Usage"). The initial invoice may relate to the number of Billed Users.

o 4.3 Proofpoint will monitor the End User's usage of the Service and if the actual number of Active Users being scanned exceeds the Licensed Usage, Proofpoint may increase the Licensed Usage accordingly. Where Proofpoint increases the Licensed Usage, Proofpoint, or the applicable Channel Partner, will at its sole option raise additional invoices and/or make adjustments to subsequent invoices to cover charges for the increase in Licensed Usage on a pro-rata basis for the remaining part of the current agreed period. End User shall promptly pay for any such subsequent invoices for End User's increased Licensed Usage.

o 4.4 At the expiry of each minimum period of contract less 30 days, unless otherwise notified by the End User, each subsequent invoice shall correspond to the current Licensed Usage.

o 4.5 For any End Users on a monthly subscription term, Proofpoint and/or Channel Partner shall invoice the End User monthly, in arrears, on or shortly after charging commences and thereafter upon each month thereafter until termination. For End Users who meet the user minimums and are on an annual subscription term, Proofpoint shall invoice the End User for the entire annual subscription terms, in advance, on or shortly after charging commences and thereafter upon each year thereafter until termination. The End User shall pay the full amount invoiced to it by

Proofpoint and/or Channel Partner in within the specific payment terms agreed to as stated on the invoice.

o 4.6 Proofpoint may vary the charges for the Service and the End User will pay such charges. Proofpoint will

give the End User at least thirty (30) days written notice of any increase in charges. No increase in charges will take place during the minimum period or after the End User has given notice to terminate this Agreement in accordance with its terms. Such notification will be via email and sent to the admin or billing contact if different.

o 4.7 The End User shall not be entitled by reason of any set-off, counter-claim, abatement or other similar deduction to withhold payment of any amount due to Proofpoint and/or Channel Partner. All payments made are non-refundable.

o 4.8 Interest shall be chargeable on any amounts overdue at the rate of one and a half percent (1.5%) per month or part thereof to run from the due date for payment until receipt by Proofpoint in full of the outstanding amount whether or not after judgment and without prejudice to any other right or remedy of Proofpoint including the recovery of costs incurred in pursuing the outstanding debt. The charges shown in this Agreement are exclusive of any value added and other applicable taxes. End User will be liable for payment of 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 End User, unless End User 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. 5. Proofpoint Warranties

o 5.1 Proofpoint will provide the Service in accordance with the Service Description contained in Schedule 1 hereto.

o 5.2 To the extent permitted by law, the foregoing conditions are In lieu of and exclude all other express and implied warranties, conditions and other terms, including but not limited to warranties of merchantability, satisfactory quality and fitness for a particular purpose. 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, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF THE INTENDED EMAIL BLOCKING OF ANY MAIL MESSAGE, THE SERVICES WILL MEET END USER’S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE SERVICES 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 SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO END USER.

6. 6. Limitation of Liability

o 6.1 PROOFPOINT’S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT

EXCEED THE FEES DUE AND PAYABLE BY END USER TO PROOFPOINT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT CAUSING SUCH LOSS PER EVENT OR SERIES OF CONNECTED EVENTS.

o 6.2 IN NO EVENT SHALL PROOFPOINT 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 OTHER COMMERCIAL 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.

o 6.3 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.

7. 7. Intellectual Property Rights. As between the parties, Proofpoint retains all title, intellectual property and other ownership rights throughout the world in and to the Services and service offering. End User retains all title, intellectual property and other ownership rights in all End User Data, End User Confidential Information and all data, text, files, output, programs, information, or other information and material that End User provides, develops, or makes available or uses in conjunction with any Service offering. End User’s rights to use the Services shall be limited to those expressly granted in this Agreement. End User is not authorized to use (and shall not permit any third party to use) the Services or any portion thereof except as expressly authorized by this Agreement or the applicable Purchase Order. There are no implied rights and all other rights not expressly granted herein are reserved. No license, right or interest in any Proofpoint trademark, copyright, trade name or service mark is granted hereunder. End User shall not remove from any full or partial copies made by End User of the Services any copyright or other proprietary notice contained in or on the original, as delivered to End User.

8. 8. Intellectual Property Rights Indemnity

o 8.1 Proofpoint will (i) defend and indemnify End User against any suit or proceeding by a third party to the extent based on a rightful claim that the applicable Service(s) in the form created and provided by Proofpoint and sold to End User pursuant to this Agreement (the"Indemnified Product(s)") directly infringes any valid U.S. patent or U.S. copyright, or misappropriates any valid trade secret enforceable under the laws of the United States or a jurisdiction thereof, and (ii) pay any damages finally awarded in such suit or proceeding as a result of such claim (or pay any settlement of such claim), provided that End User will promptly notify Proofpoint in writing of the third party claim, suit or proceeding (in any event, within thirty (30) days after End User becomes aware or reasonably should have been aware of such claim); authorizes and allows Proofpoint to have sole control of the defense and/or settlement of the claim; and provides any information, assistance and other cooperation reasonably requested by Proofpoint in connection with the claim, suit or proceeding. In the event of a claim relating to an Indemnified Product, Proofpoint will, at its sole option and expense: (a) procure for End User the right to use the Indemnified Products under the terms of this Agreement; (b) replace or modify the Indemnified Products to be (or to make it more likely to be) non-infringing; or (c) if the foregoing options are not reasonably practicable, then Proofpoint

may terminate End User's rights to use Indemnified Products and refund all amounts paid by End User to Proofpoint attributable to End Users' future usage or access to the Indemnified Products hereunder. Proofpoint shall have no liability for, and the aforementioned Proofpoint obligations shall not apply to any claim based on or relating to (1) the use of the Indemnified Products in combination with any other product, service or device, if such infringement claim would have been avoided by the use of the Indemnified Products without such other product, service or device; (2) any modification or adaptation to the Indemnified Products; (3) use of an Indemnified Products other than as expressly authorized pursuant to this Agreement; (4) use of the Indemnified Products by End User after Proofpoint has made available to End User a modified version or replacement for the Indemnified Products or has provided notice to End User that a claim of infringement has been or may be made with respect to the Indemnified Product; or (5) specifications, instructions, features, functions or designs or other elements provided by or requested by End User. The foregoing is the sole and exclusive remedy of End User and the entire liability of Proofpoint with respect to any infringement or claim of infringement of any third party intellectual property right.

9. Termination

o 9.1 Without prejudice to any other rights to which it may be entitled, either party may terminate this Agreement with immediate effect:

▪ 9.1.1 if the other party commits any material breach of any of the terms herein and (If such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified under this Section 9.1.2 of the breach, such notice to refer to the notifying party's intent to terminate this Agreement unless the breach is remedied; or

▪ 9.1.2 if an order is made or a resolution Is passed for the winding up of the other party or If an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or if a receiver, administrator or administrative receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt.

▪ 9.2 Proofpoint may terminate this Agreement with immediate effect if there is a change of control of the End User.

▪ 9.3 Proofpoint as an alternative to Section 9.1.1 or during the thirty (30) day period specified in Section 9.1.1. may suspend the provision of the Service to the End User with immediate effect if: (i) the End User is in material breach of any obligation in this Agreement; or (ii) the End User allows Open Relay to occur or; (iii) the End User is sending bulk mail through the outbound relay service.

▪ 9.4 Termination of this Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination. 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, as well as any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

10. 10. Confidentiality

o 10.1 As used herein, "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 and Purchase Order), the Service(s), software, business and marketing plans, technology and technical information, product designs, and business processes.
o 10.2 "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) information that 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.

o 10.3 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 this Agreement or in any manner that would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States, 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 as 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. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information. 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.

o 10.4 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.

o 10.5 The parties acknowledge and agree that the confidentiality obligations set forth in this Agreement are reasonable and necessary for the protection of the parties’ business interests, that irreparable injury may result if they are breached, and that in the event of any actual or potential breach of Section 10, that 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.

o 10.6 Proofpoint recognize and confirm that the content of all emails sent to or received from the End User by

the Service is End User Confidential Information. However, Proofpoint reserve the right to utilize the virus-related content of such email or its attachments solely for the purposes of: (i) maintaining and improving the performance and the integrity of the Service; (ii) complying with all regulatory, legislative or contractual requirements; and (iii) making available to licensors of the Service any information passing through the Service which may be of interest to the licensors solely for the purpose of further developing and enhancing the Service. Where Proofpoint exercise the foregoing rights Proofpoint will use all reasonable endeavors to keep confidential all information received from the End User or for the End User In connection with the Service.

11. 11. Miscellaneous.

o 11.1 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.

o 11.2 Nothing in this Agreement is intended to confer on a person any right to enforce any term of this Agreement which that person would not have had but for the Contract (Rights of Third Parties) Act 1999. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

o 11.3 Each party agrees to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Service(s) and Proofpoint Confidential Information and any media, to assure that the Service(s), Proofpoint Confidential Information and media are not exported, imported or used in violation of law or applicable regulation.

o 11.4 Proofpoint has no control or influence over the content of the emails processed by the Service the End User. The End User shall use all reasonable efforts to ensure it Informs (for example via a banner message on emails) those who use any communications system covered by the Service, that communications transmitted through such system maybe intercepted, and indicate the purposes of such interception. End User grants to Proofpoint an irrevocable, royalty-free, fully-paid up, non-exclusive, license to use data from suspicious and unwanted emails, including email metadata, embedded URLs and attachments (which may include personal data), for its security services platform. Such use may entail the data being stored for analysis for up to 120 days from the point of initial transit through the Services or in perpetuity, depending on the nature of the suspicious or threatening characteristic.

o 11.5 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 End User or Channel Partner to Proofpoint shall be deemed a convenient order and payment device only and no terms stated in any Purchase Order or in any other order document shall be incorporated into this Agreement, and all such terms shall be void and of no effect.

o 11.6 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. The parties' rights and remedies under this Agreement are cumulative.

o 11.7 End User is not entitled to transfer or assign this Agreement without Proofpoint's prior written consent.

o 11.8 Any notice required to be given pursuant to this Agreement shall be in writing and shall be given by delivering the notice by hand, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to Proofpoint at Proofpoint, Inc., 925 W. Maude Avenue, Sunnyvale, CA 94085 Attn: Legal Department, Re: Proofpoint Essentials Notice, and to End User at the address set out in its account information or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

o 11.9 This Agreement shall be governed and construed under the laws in the country in which you purchased a license to the Services as identified in the following table, and the parties submit to the jurisdiction and venue of the courts described below. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its intellectual property rights or Confidential Information. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Country	**Governing Law**	**Exclusive Jurisdiction and Venue Resides with Courts Located in**
Australia	New South Wales	Sydney
Canada	Province of Ontario	Toronto
France	France	Commercial Courts of Paris
Germany	Germany	Berlin
Italy	Italy	Milan
United Kingdom	England	High Court of London

United States State of California County of Santa Clara

- 11.10 The End User agrees that Proofpoint may use the End User's company name, logo and testimonial (if such testimonial is provided) in Proofpoint' promotional material and communications including, but not limited to, proposals, presentations, website and corporate brochure.

12. Protected Health Information
For End Users who have access to Protected Health Information (as defined in 45 CFR Section 160.103), this section 12 applies. The parties agree to handle such Protected Health Information in accordance with the terms of the Business Associate Addendum ("BAA"). Proofpoint's current BAA is available on Proofpoint's website at https://www.proofpoint.com/us/legal/trustand may be updated from time to time in its sole discretion, provided that any update shall not materially degrade the level of protection.

13. COUNTRY UNIQUE TERMS. If you purchased the Services in any territory specified below (the "Local Territory"), this section sets forth specific provisions as well as exceptions to the above terms and condition. To the extent any provision applicable to the Local Territory (the "Local Provision") set forth below is in conflict with any other term or condition in this agreement, the Local Provision will supersede such other term or condition with respect to any licenses purchased in the Local Territory.

- Australia:
  - a) Proofpoint Warranties (Section 5): The following is added: The warranties specified this Section are in addition to any rights End User may have under the Competition and Consumer Act 2010 or other legislation and are only limited to the extent permitted by the applicable legislation.

  - b) Limitation of Liability (Section 6): The following is added: Where Proofpoint is in breach of a condition or warranty implied by the Competition and Consumer Act 2010, Proofpoint's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily obtained for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

- Canada
  - Personal Data: The following is added as a new Section 14: "Personal Data" refers to information relating to an identified or identifiable individual made available by one of the parties, its personnel or any other individual to the other in connection with this Agreement. The following provisions apply in the event that one party makes Personal Data available to the other:

  - (1) General

    - (a) Each party is responsible for complying with any obligations applying to it under applicable Canadian data privacy laws and regulations ("Laws").

▪ (b) Neither party will request Personal Data beyond what is necessary to fulfill the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.

▪ (2) Security Safeguards

▪ (a) Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.

▪ (b) Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other

▪ (c) Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.

▪ (d) Additional or different services required to comply with the Laws will be deemed a request for new services.

▪ (3) Use
Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfill the purpose(s) for which it was made available.

▪ (4) Access Requests

a) Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.

▪ (b) Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.

▪ (c) Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.

▪ (5) Retention

▪ Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfill the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.

▪ (6) Public Bodies Who Are Subject to Public Sector Privacy Legislation For End Users who are public bodies subject to public sector privacy legislation, this section applies only to Personal Data made available to End User in connection with this Agreement, and the obligations in this section apply only to End User, except that: 1) section (2)(a) applies only to Proofpoint; 2) sections (1)(a) and (4)(a) apply to both parties; and 3) section (4)(b) and the last sentence in (1)(b) do not apply.

European Union Member States (All Members)

- Personal Data: The following is added as a new Section 14:

- (1) Definitions:

    - (a) Personal Data – personally identifiable information disclosed by End User to Proofpoint as part of the Services, including names, job titles, business addresses, telephone numbers and email addresses of End User's employees and contractors. For Austria, Italy and Switzerland, Personal Data also includes information about End User and its contractors as legal entities (for example, End User's revenue data and other transactional information)

    - (b) Data Protection Authority – the authority established by the Data Protection and Electronic Communications Legislation in the applicable country or, for non-EU countries, the authority responsible for supervising the protection of personal data in that country, or (for any of the foregoing) any duly appointed successor entity thereto.

    - (c) Data Protection & Electronic Communications Legislation – (i) the applicable local legislation and regulations in force implementing the requirements of EU Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data and on the free movement of such data) and of EU Directive 2002/58/EC (concerning the processing of personal data and the protection of privacy in the electronic communications sector); or (ii) for non-EU countries, the legislation and/or regulations passed in the applicable country relating to the protection of personal data and the regulation of electronic communications involving personal data, including (for any of the foregoing) any statutory replacement or modification thereof.

- (2) End User authorizes Proofpoint to process and use Personal Data in support of End User's use of the Services (the ″Specified Purpose″).

- (3) Proofpoint agrees that all Personal Data will be processed in accordance with the Data Protection & Electronic Communications Legislation and will be used only for the Specified Purpose.

- (4) To the extent required by the Data Protection & Electronic Communications Legislation, End User represents that (a) it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) data subjects as are necessary in order to enable Proofpoint to process and use the Personal Data for the Specified Purpose.

- (5) End User authorizes Proofpoint to transfer Personal Data outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority ("Model Clauses") or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation. End User may at any time contact Proofpoint to enter into such Model Clauses.

o France

- a) Limitation of Liability (Section 6): The following replaces the terms of this section in its entirety:

Except as otherwise provided by mandatory law:

▪ 1. Proofpoint' liability for any damages and losses that may arise as a result of the performance of its obligations in connection with this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Proofpoint is at fault), for a maximum amount equal to the charges You paid for the Services that has caused the damages. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Proofpoint is legally liable.

▪ 2.UNDER NO CIRCUMSTANCES IS PROOFPOINT,OR ANY OF ITS SERVICES DEVELOPERS, LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

▪ 3.The limitation and exclusion of liability here in agreed applies not only to the activities performed by Proofpoint but also to the activities performed by its suppliers and Services developers, and represents the maximum amount for which Proofpoint as well as its suppliers and Services developers, are collectively responsible. This limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Proofpoint is legally liable.

o Germany

▪ a)Warranty(Section5):The following replaces the terms of this section in its entirety:

Proofpoint warrants that the Services provides the functionalities set forth in the associated documentation ("Documented Functionalities") for the Limited Warranty Period following receipt of the Services when used on the recommended hardware configuration. Limited Warranty Period means one year if you are a business user and two years if you are not a business user. Non-substantial variation from the Documented Functionalities does not establish any warranty rights. THIS LIMITED WARRANTY DOES NOT APPLY TO SERVICES PROVIDED TO YOU FREE OF CHARGE (FOR EXAMPLE, UPDATES, PRE-RELEASE, EVALUATION, OR NFR) OR SERVICES THAT HAS BEEN ALTERED BY YOU, TO THE EXTENT SUCH ALTERATION CAUSED A DEFECT. To make a warranty claim, you must return, at Proofpoint expense, the Services and proof of purchase to the company from whom you obtained it. If the functionalities of the Services vary substantially from the agreed upon functionalities, Proofpoint is entitled, by way of re- performance and at is own discretion, to repair or replace the Services. If that fails, you are entitled to a reduction of the purchase price or to cancel the purchase agreement.

▪ b) Limitation of Liability (Section6):the following paragraph is added to this Section:

The limitations and exclusions specified in this Section will not apply to damages caused by Proofpoint' intentional or by gross negligence. In addition, Proofpoint shall be responsible up to the amount of the typically foreseeable damages from any damage which has been caused by Proofpoint or its agents due to the slightly negligent breach of a material contractual duty. This limitation of liability shall apply to all damage claims, irrespective of the legal basis there of and in particular, to any pre-contractual or auxiliary contractual claims. This limitation of liability shall not, however, apply to any mandatory statutory liability under the product liability act nor to any damage which is caused due to the breach of an express warranty to the extent the express warranty was intended to protect you from the specific damage incurred. This

clause shall not be intended to limit liability where the extent of liability is provided by mandatory law.

o Italy

▪ a) Limitation of Liability (Section 6): the following replaces the terms of this section in its entirety:

Apart from damages arising out of gross negligence or willful misconduct for which Proofpoint may not limit its liability, Proofpoint' liability for direct and indirect damages related to the original or further defects of the Services, or related to the use or the nonuse of the Services or related to any case whatsoever for breach of the Agreement, shall be limited to the fees paid by you to Proofpoint for the Services or for the part of the Services upon which the damages were based.

o United Kingdom

▪ c) The following is added to the end of the Section 11.9: Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer (whether expressly or by implication) any rights or other benefits whether pursuant to the Contracts Rights of Third Parties) Act 1999 or otherwise in favour of any person not a party hereto.