

**STATE OF TEXAS  
COUNTY OF FORT BEND**

**ADDENDUM TO PROOFPOINT APPLIANCE AGREEMENT**

**THIS ADDENDUM**, entered into by and between Fort Bend County ("Customer"), a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.024(a) and Proofpoint Inc., hereinafter referred to as "Contractor."

- A. The parties have previously executed that certain Proofpoint Appliance Agreement (hereinafter "the Agreement") for services and any and all Addendum(s) for subsequent years; and
- B. The parties desire to renew the agreement and increase funding for certain additional services and any and all Addendum(s) as set forth below.
- C. WHEREAS the parties now desire to enable Customer to use and access the Licensed Product as a service;

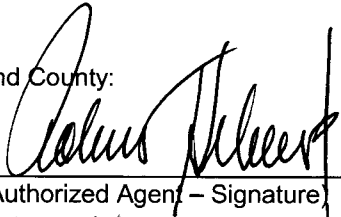
NOW, THEREFORE, Contractor and Customer agree as follows:

- 1. Capitalized terms otherwise not defined in this Amendment 1 shall have the meanings set forth in the Agreement
- 2. The parties hereby amend the agreement to incorporate the Security Services Exhibit attached hereto as Exhibit A. From this Addendum Effective Date forward, the term "Licensed Product" in the Agreement shall be amended to mean the "Security Services" as defined in Exhibit A and as accessed by Customer through the internet. The warranties provided in Section 4 of this Exhibit A shall supercede and replace the warranties provided in Section 10.1 of the Agreement.
- 3. Notwithstanding anything to the contrary herein, for Software that was made available to Customer and/or installed on any Appliance prior to the Addendum Effective Date, such Software (as previously defined in the Agreement) shall remain subject to the terms of the Agreement prior to this Addendum, except for Sections 2 (License Grant), 3 (Services), 4 (Appliance), 6 (Delivery Dates), 7 (Packing, Shipment and Title) and 10.1 (Warranty) shall not apply to such Software.
- 4. This Addendum shall become effective upon execution on September 14, 2011 and shall terminate on or before September 13, 2012.
- 5. An additional amount not-to-exceed \$24,455 shall be available for additional services in connection with the Work as described in Exhibit B.
- 6. No additional funding shall be available for services without prior written consent of the Fort Bend County Commissioners Court.
- 7. Except as modified herein, the Agreement and any previous Addenda remains in full force and effect and have not been modified or amended.
- 8. If there is a conflict between this Addendum and the Agreement, the provisions of this Addendum shall prevail.

IN WITNESS WHEREOF, the undersigned have caused this Addendum to be executed by their respective authorized representatives. This Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

[Signature page to follow]

Fort Bend County:



(Authorized Agent - Signature)

Title Robert Hebert, County Judge

Date 9-27-2011

Proofpoint, Inc.:



(Authorized Agent - Signature)

Title VP, Corporate Controller

Date 9-22-11



## EXHIBIT A: SECURITY SERVICES EXHIBIT

1. For purposes of this Security Services Exhibit the following definitions shall apply. Capitalized terms used in this Security Services Exhibit without separate definition shall have the meaning specified in the General Terms.

**"Customer Data"** means any content or data transmitted through or into or out of the Security Services by, for, on behalf of or at the direction of Customer.

**"Customer Equipment"** means Customer's computer hardware, software and network infrastructure used to access the Security Service.

**"Security Services"** means the filtering and processing of email within the on-demand, Web-based email security and data loss prevention services provided by Proofpoint, including updates thereto.

**"Users"** means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals who are authorized by Customer to use the Security Service and/or whose information is transmitted via or stored using the Security Service.

**2. TERMS OF SECURITY SERVICES.** Proofpoint shall make the Security Service available to Customer and its Affiliates in accordance with the General Terms, Order Form, this Security Services Exhibit and the Security Services Documentation. Customer's right to use the Security Service is limited to the maximum number of Mailboxes for each module specified in each Order Form.

**3. 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 Security Service and ensuring that the Customer Equipment and any ancillary services are compatible with Security Service and comply with all configuration requirements set forth in the Security Services Hosted Service Documentation; and (iii) complying with all 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 and service providers (if applicable) in managing its electronic messaging system. If Customer has elected to route outbound email through the Security Services, Customer is responsible for maintaining the outbound email filtering Security Services configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of 95 or higher. If Proofpoint has reason to believe that Customer has modified the outbound email configuration setting, Proofpoint reserves the right to monitor and reset such settings.

### 4. WARRANTIES

**4.1** Proofpoint warrants that the Security Service will substantially conform in all material respects in accordance with the Security Service Documentation. Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Security Service Documentation in its sole discretion, provided the functionality of the Security Service will not be materially decreased during the Term. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will provide the remedy set forth in Section 9.4 of the General Terms.

**4.2** Proofpoint warrants that the Security Services will meet the requirements set forth in the Security Service Level Agreements (each, an "SLA"), as described on Proofpoint's website at <http://www.proofpoint.com/license>. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Proofpoint will provide the remedy set forth in the respective SLA.

**5. TERMINATION.** Upon the effective date of termination of this Agreement: Customer's license to use the Security Service will cease and Proofpoint will delete all backed-up Customer Data from Proofpoint systems within 30 days of termination of this Agreement.



## Exhibit B

### Pricing Proposal

Quotation #: 4724711

Description: ProofPoint 1 Year

Created On: Aug-04-2011

Valid Until: Aug-31-2011

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## County of FORT BEND

### Kenneth Ford

301 Jackson Street

Richmond, TX 77469

UNITED STATES

Phone: (281) 341-4588

Fax:

Email: kenneth.ford@co.fort-bend.tx.us

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All Prices are in US Dollar(USD)

Product	Qty	Your Price	Total
1 Proofpoint Enterprise Protection - Saas (POD - Inbound Protection Suite) 1016 Mailboxes Proofpoint - Part#: PP-B-EPT-S-B	1	\$24,455.00	\$24,455.00
2 Platinum Support -24 x 7 4 Named Support Contacts Proofpoint - Part#: PP-SUPPORT-PS	1	\$0.00	\$0.00
3 Proofpoint Enterprise Services SaaS Initiation Proofpoint - Part#: PP-PST-006	1	\$0.00	\$0.00
		Total:	\$24,455.00

### Additional Comments

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### Retrieve your quote:

<https://www.shidirect.com/Quotes/Quoteinfo.aspx>

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*The Products offered under this proposal are subject to the SHI Return Policy posted at [www.shi.com/returnpolicy](http://www.shi.com/returnpolicy), unless there is an existing agreement between SHI and the Customer.*

STATE OF TEXAS  
COUNTY OF FORT BEND

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**ADDENDUM TO LICENSE MAINTENANCE AGREEMENT**

**THIS ADDENDUM**, entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.024(a) and Proofpoint Inc., hereinafter referred to as "Contractor."

**WHEREAS**, the parties have previously executed that certain License Maintenance Agreement (hereinafter "the Agreement") for services and any and all Addendum(s) for subsequent years; and

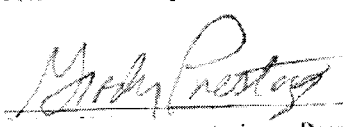
**WHEREAS**, the parties desire to renew the agreement and increase funding for certain additional services and any and all Addendum(s) as set forth below.

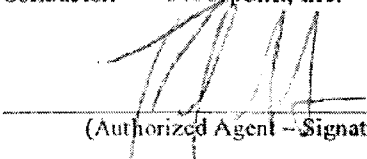
**NOW THEREFORE**, the Agreement is hereby amended as follows:

- A. This Addendum shall become effective upon execution on June 1, 2010 and shall terminate on or before May 31, 2011.
- B. An additional amount not-to-exceed \$22,581.00 shall be available for additional services in connection with the Work as described in Exhibit A.
- C. Contractor's compensation for under the Agreement and any Addendums shall not exceed \$ 80,764.00.
- D. No additional funding shall be available for services without prior written consent of the Fort Bend County Commissioners Court.
- E. Except as modified herein, the Agreement and any previous Addenda remains in full force and effect and have not been modified or amended.
- F. If there is a conflict between this Addendum and the Agreement, the provisions of this Addendum shall prevail.

Fort Bend County:


Contractor: Proofpoint, Inc.





Grady Prestage, Commissioner Precinct 2  
Presiding Officer, Commissioners Court, March 23, 2010

Date: March 18, 2010

ATTEST:   
Dianne Wilson,  
County Clerk

Paul Auvil  
(Authorized Agent - Printed Name)

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 22,581.00 to pay the obligation of Fort Bend County under and within the foregoing contract.

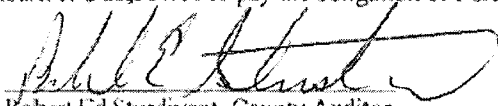
  
Robert Ed Stardivant, County Auditor

Exhibit A: Quote dated 02.18.10



Patty Campbell  
 Proofpoint Inc.  
 692 Ross Dr  
 Sunnyvale, CA 94089

## Quotation

Tel: 408-850-4135  
 Fax: 408-517-4711  
 pccampbell@proofpoint.com  
 www.proofpoint.com

Prepared For:	
Name:	Darlean Swaiers
Organization:	Fort Bend County
Address:	500 Liberty, Suite 212 Richmond, TX, 77469
Phone:	281-341-4525
Email:	swalldar@co.fort-bend.tx.us

Quote Number: 2204-PC-01	
Quote Date:	February 18, 2010
Quote Expires:	March 24, 2010
Terms:	Net 30
FOB:	Origin

Item No.	Product Description	Units	Product #	Unit Price	Extended Price	Total
1	Proofpoint Messaging Security Gateway™ User License Fees	1,016	PP-A-SP-105	\$9.75	\$9,906	\$9,906
2	Spam Detection module (Term: 6/1/2010 - 9/13/2011) Virus Scanning module (Term: 6/1/2010 - 9/13/2011) with McAfee Olympus Engine	1,016	PP-A-VM-105	\$7.80	\$7,925	\$7,925
	Proofpoint Support (Term: 6/1/2010 - 9/13/2011) Gold Support - 8x5, Pacific Time Zone				included	included
3	Warranty - P640 (Term: 6/13/2010 - 9/13/2011) JZ3QFG1 & Z04QFG1	2	WARRANTY-P6	\$1,250	\$2,500	\$2,500
4	Warranty - P640 (Term: 6/30/2010 - 9/13/2011) 13STFG1	1	WARRANTY-P6	\$1,250	\$1,250	\$1,250
5	Warranty - P620 (Term: 8/14/2010 - 9/13/2011) CX21MD1	1	WARRANTY-P6	\$1,000	\$1,000	\$1,000
					\$22,581	\$22,581

(Multi-Year Pricing requires full payment upon contract execution)

This quotation only provides pricing information for the Proofpoint products listed above. Any purchase by Customer of such Proofpoint products is contingent upon Proofpoint and Customer executing a software and purchase agreement. The pricing contained herein is only valid through the expiration date specified above. License, support and other fees and charges do not include sales, use, withholding, value added, excise or other similar taxes and duties, which are the responsibility of the customer. Shipping fees for appliance are also responsibility of the customer.

2204-PC-01/e006v11 (307)



#### Sole Source Description:

Proofpoint's MLX technology is a patent pending technology that is used for anti-spam and other security-related content classification applications. This technology is unique and proprietary to Proofpoint, and was developed in-house over the course of many years.

Proofpoint is a recognized leader in the messaging security market. Proofpoint's technology is machine learning based. Machine learning is a discipline of artificial intelligence and natural language processing that is used in data mining, genomics, military and web search applications. Proofpoint has taken the foundation of this science and has done applied research and development to produce MLX, a content classification engine used in messaging security applications – from anti-spam detection to identification of intellectual property leaks. MLX is used by some of the largest government and commercial organizations in the world.

Specific proprietary technology developed under the MLX framework include LRX – a Proofpoint modification of logistic regression and Support Vector Machines. Additional techniques that deal with the ever-more challenging and shifting nature of spam and increasing volumes include color-space distance and pipelining. Together these technologies produce exceptionally high accuracy with a negligible false positive rate. This is paramount in the mission critical environments of our customers. The Proofpoint Attack Response Center, Proofpoint's research arm, has on staff PhDs and scientists, complemented by an engineering staff across a range of disciplines from genomics to security. This cross-disciplinary approach to anti-spam research and development is unique in our industry and allows us to maintain our competitive advantage.

Other vendors use off-the-shelf software SDKs and libraries. This approach results in static technology that is unable to adapt to the dynamic nature of spam. By building our own proprietary technology, Proofpoint has produced a dynamic classifier that can stay ahead of the dynamic nature of spam. This gives our customers peace of mind and alleviates any cost burden associated with messaging security.

STATE OF TEXAS  
COUNTY OF FORT BEND

ADDENDUM TO APPLIANCE AGREEMENT

THIS ADDENDUM, entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.024(a) and PROOFPOINT.

THAT WHEREAS, the parties have previously executed that certain Agreement for services and any and all Addendum(s) for subsequent years is attached hereto;

AND WHEREAS, the parties desire to renew that certain agreement for services and any and all Addendum(s) for one year from the date here of; and,

WHEREAS, the following changes are incorporated into the Agreement as if a part of the original Agreement: TERMS IS JUNE 1, 2009 THROUGH MAY 31, 2011.

Sign this 17 day of April 2009.

County Purchasing Agent  
Gibson, [Signature] CPPB  
\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

Vendor/Contractor

PROOFPOINT

Proofpoint, Inc.  
(contractor/vendor name)

[Signature]  
\_\_\_\_\_  
(signature)

Reed Auvil  
(printed)

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 10,000.00 to pay the obligation of Fort Bend County under and within the foregoing contract.

[Signature]  
Robert Ed Sandivant, County Auditor



Patty Campbell  
 Proofpoint  
 892 Ross Drive  
 Sunnyvale, CA 94089

Tel: (408) 850-4135  
 Fax: (408) 517-4700  
 pcampbell@proofpoint.com  
 www.proofpoint.com

**Customer Quote**

<b>Name:</b> Charles King <b>Organization:</b> Fort Bend County <b>Address:</b> 500 Liberty St Ste 212 Fort Bend County Mis Richmond, TX 77469-3500 <b>Phone:</b> (281) 341-4584 <b>Email:</b> kingcd@co.fort-bend.tx.us		<b>Date:</b> March 6, 2011 <b>Offer Expires:</b> April 5, 2011 <b>Payment Terms:</b> Net 30	
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Item No.	Product Description	SKU	Term	Mailboxes	Units	Extended Price	Total
<b>Proofpoint Messaging Security Gateway™</b>							
User License Fees							
1	Spam Detection Module	PP-A-SP-105	06/01/2009-05/31/2010	1016		\$7,561	\$7,561
2	Virus Scanning Module with F-Secure anti-virus	PP-A-VF-100	05/01/2009-05/31/2010	1016		\$8,038	\$8,038
<b>Proofpoint Support</b>							
3	Gold Level Support		06/01/2009-05/31/2010		1	Included	Included
<b>Proofpoint Dynamic Update Service™</b>							
4	Spam Detection Dynamic Update Service (regular updates with interim updates based on external threats)				1	Included	Included
5	Virus Scanning Signature and F-Secure Updates (periodic releases supplemented by external virus discoveries)				1	Included	Included
<b>Total</b>						<b>\$13,599</b>	<b>\$13,599</b>

(Multi-Year Pricing requires full payment upon contract execution) (Note: Any discounts apply only to Annual Proofpoint User License Fees)  
 This quotation only provides pricing information for the Proofpoint products listed above. Any purchases by Customer of such Proofpoint products is contingent upon Proofpoint and Customer executing a software and purchase agreement. The pricing contained herein is only valid through the expiration date specified above.  
 License, support and other fees and charges do not include sales, use, withholding, value added, excise or other similar taxes and duties, which are the responsibility of the Customer. Shipping fees for appliances are also responsibility of the customer.



Fatty Campbell  
Proofpoint Inc.  
892 Ross Dr  
Cincinnati, PA 45203

## Quotation

Tel: 408-890-4135  
Fax: 408-517-4711  
proofpoint@proofpoint.com  
www.proofpoint.com

Name:	Darlean Swallow
Organization:	Fort Bend County
Address:	300 Liberty, Suite 212 Richmond, TX, 77469
Phone:	281 341-4525
Email:	swallow@co.fort-bend.tx.us

Quote Expires:	March 17, 2009
Date Expires:	April 17, 2009
Term:	Net 30
FOB:	Origin

Item No.	Product Description	Units	Product #	Unit Price	Extended Price	Total
1	Warranty - P80S (Term: 3/31/2009 - 3/30/2010) 1190171	1	WARRANTY-P8	\$1,500	\$1,500	\$1,500
2	Warranty - P640 (Term: 6/13/2009 - 6/12/2010) JZ3QFG1 & 2B4QFG1	2	WARRANTY-P6	\$1,000	\$2,000	\$2,000
3	Warranty - P640 (Term: 6/30/2009 - 6/29/2010) 13STFG1	1	WARRANTY-P6	\$1,000	\$1,000	\$1,000
4	Warranty - P620 (Term: 8/14/2009 - 8/13/2010) CPK21MD1	1	WARRANTY-P6	\$1,000	\$1,000	\$1,000
					\$5,500	\$5,500

(Multi-Year Pricing requires full payment upon contract execution)

This table and all other pricing information shown on this quotation is provided in accordance with the terms and conditions of our standard license and support agreement. License, support and other fees and charges do not include sales, use, withholding, value added, excise or other similar taxes and duties, which are the responsibility of the customer. Shipping fees for appliances are also responsibility of the customer.

2004 PPO 014900v111302

STATE OF TEXAS §  
COUNTY OF FORT BEND §

**ADDENDUM TO APPLIANCE AGREEMENT**

**THIS ADDENDUM**, entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.024(a) and **PROOFPOINT**.

**WHEREAS**, the parties have previously executed that certain Agreement for services and any and all Addendum(s) for subsequent years; and

**WHEREAS**, the parties desire to renew that certain agreement for services and any and all Addendum(s) for one year from the date here of; and,

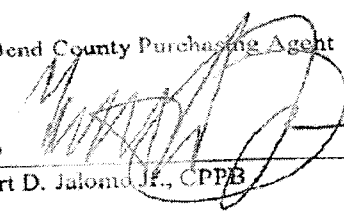
**NOW THEREFORE**, the Agreement is hereby amended as follows:

**TERM IS JUNE 1, 2008 THROUGH MAY 31, 2009.**

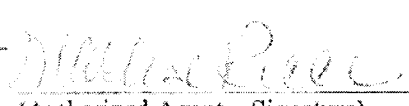
Except as modified herein, the above referenced Agreement and any and all Addendums remain in full force and effect and have not been modified or amended.

Sign this 28 day of November 2008.

Fort Bend County Purchasing Agent

  
Gilbert D. Jalomo, Jr., CPPB

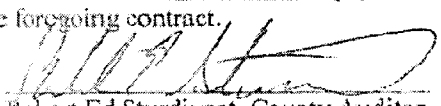
PROOFPOINT

  
(Authorized Agent - Signature)

Marise Tice  
(Authorized Agent - Printed Name)

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$ 14,441.00 to pay the obligation of Fort Bend County under and within the foregoing contract.

  
Robert Ed Sturdivant, County Auditor

STATE OF TEXAS  
COUNTY OF FORT BEND

ADDENDUM TO Appliance/License AGREEMENT

THIS ADDENDUM, entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.011(d) and Proffpaint, Inc.

THAT WHEREAS, the parties have previously executed that certain Agreement for services and any and all Addendum(s) for subsequent years to attached hereto;

AND WHEREAS, the parties desire to renew that certain agreement for services and any and all Addendum(s) for one year from the date hereof ; and,

WHEREAS, the following changes are incorporated into the Agreement as if a part of the original Agreement: June 6, 2007 thru May

31, 2008


Sign this 30 day of March 2007.

Fort Bend County Purchasing Agent

  
Gilbert D. Talomo Jr., CPPB

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 2,325.00 to pay the obligation of Fort Bend County under and within the foregoing contract.

  
Robert Ed Sturdivant, County Auditor

STATE OF TEXAS  
COUNTY OF FORT BEND

ADDENDUM TO PROOFPOINT, INC.  
PROOFPOINT APPLIANCE AGREEMENT

THIS ADDENDUM, entered into by and between Fort Bend County, a body corporate and politic, acting herein by and through its Purchasing Agent, according to V.T.C.A. Local Government Code 262.011(d), and PROOFPOINT, INC., authorized to conduct business in the State of Texas.

THAT, WHEREAS, the parties have executed and accepted that certain 'Proofpoint Appliance Agreement,' as attached hereto and incorporated by reference; and

WHEREAS, the following changes are incorporated as if a part of the 'Proofpoint Appliance Agreement:'

1. The term of this Agreement shall commence on the date the last party signs this Addendum and the Proofpoint Appliance Agreement and shall continue for twelve (12) months. This agreement shall not automatically renew without express written consent from Fort Bend County.
2. Proofpoint, Inc. warrants to Fort Bend County that: (1) Proofpoint, Inc. has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession and Proofpoint, Inc. will apply that skill and knowledge with care and diligence to ensure that the services provided under this agreement will be performed and delivered in accordance with the professional standards and in accordance with industry standards, and (2) following the date of acceptance, the service provided will conform to the specifications in this agreement and will provide the services described. Proofpoint, Inc. specifically warrants that as to any public record information and related services using its proprietary databases, such information and databases shall (a) be free from material errors caused by Proofpoint, Inc.'s failure to fulfill its obligations under this agreement, and (b) materially conform to all requirements and specifications contained in this agreement.
3. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas. Venue shall lie in Fort Bend County, Texas, for any suit regarding this agreement.
3. The parties agree that under the Constitution and laws of the State of Texas, Fort Bend County cannot enter into an agreement whereby Fort Bend County agrees to indemnify or hold harmless another party; therefore, all references of any kind to indemnifying or holding or saving harmless for any reason are hereby deleted. The penalties and remedies provided by agreement do not limit common law remedies of tort, contract, or equity, including a suit for damages, injunction, or mandamus.
4. Fort Bend County, Texas, is a body corporate and politic under the laws of

5. the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. If there is a conflict between this Addendum and the agreement, the provisions of this addendum shall prevail.

**FORT BEND COUNTY**

By: \_\_\_\_\_

Gilbert D. Jalomo, Jr., CPPB

Date: \_\_\_\_\_

6/28/05

**PROOFPOINT, INC.**

By: \_\_\_\_\_

Authorized Agent - Signature

Lee K. Cooke  
Authorized Agent - Printed Name

Title: \_\_\_\_\_

CFO

Date: \_\_\_\_\_

6-24-2005

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ 12,328.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

# proofpoint?

**What's New in  
Proofpoint Protection Server® 3.0 &  
Proofpoint Messaging Security Gateway™ 3.0**

October 1, 2004

10201 Torre Ave. Ste. 100  
Cupertino, CA 95014  
<http://www.proofpoint.com>  
[info@proofpoint.com](mailto:info@proofpoint.com)

Proofpoint: confidential

## Overview

Versions 3.0 of the Proofpoint Protection Server® and Proofpoint Messaging Security Gateway™ (previously the P-Series Message Protection Appliance) have a number of new modules and exciting features. This upcoming release adds powerful content security, unique reputation-based network security, improved MTA scalability, increased anti-spam accuracy and message encryption functionality. This document provides an overview of the most important new features. Note that final pricing for new modules is to be determined.

## New Modules

These modules will be available as new, separately priced, options on both the Proofpoint Protection Server and the Proofpoint Messaging Security Gateway.

### Content Security: Digital Asset Security Module

The Digital Asset Security module allows companies to protect confidential information and prevent disclosure of internal memos and other information hidden within complex and unstructured business documents. The module works by first training Proofpoint's MLX™ technology on the sensitive information that needs to be protected. This is done by simply emailing or uploading document sets into the module. Once the training is complete, the module "recognizes" these documents (or any content fragment) in inbound or outbound email and acts upon each message based on configured policy. For example, a CEO can "cc" an internal-only memo to a specific email address (confidential@example.com, for example) that is read by the Digital Asset Security module. Once received by the Digital Asset Security module MLX automatically trains itself to detect the content in the internal-only memo, and a policy can be created based on the level of sensitivity of the document. If an employee attempts to forward any part of the internal-only memo to an external recipient, the Digital Asset Security module will detect the content, and block the message (if that is your configured policy). The benefit of this module is to stop breaches of internal memos and other confidential information without increasing administrative burden or relying on stale lists of keywords (or regular expression searches) that detect only structured information.

## **Content Security: Regulatory Compliance Module**

The Regulatory Compliance Module protects non public information (NPI) and thus helps companies comply with numerous U.S. industry regulations such as HIPAA, GLBA, SEC Regulation FD, California SB-1386 and AB 1950 as well as international regulations such as Canada's Personal Information Protection and Electronic Documents Act (PIPEDA), Europe's BASEL II and Data Protection Directive as well as the United Kingdom's Data Protection Act.

This new module provides specific functionality to help companies comply with the Health Insurance Portability and Accountability Act (HIPAA), a healthcare related regulation that requires, among other things, companies to encrypt private communication to business partners and ensure Protected Health Information (PHI) is not transmitted over clear text. This new module will detect email with personal identifiers (e.g., a patient number) and Code Sets (these are dictionaries issued by the government containing disease names, treatment and medicine codes) and act upon messages per your policy.

This new module will also help companies specifically comply with the Gramm-Leach Bliley Act (GLBA), a financial related regulation that requires, among other things, companies to encrypt private communication to business partners and protect personal financial information (PFI). This new module will detect email with personal identifiers (e.g., a social security or financial account numbers) and other information (such as ATM card numbers, credit card numbers and ABA routing numbers) and act upon messages per your policy.

This module will work in conjunction with TLS (new feature described below) for gateway to gateway encryption or one of Proofpoint's secure messaging partners for desktop to desktop encryption.

## **New Features**

### **Content Security: Attachment Scanning**

Version 3.0 now supports content filtering of attachments with the ability to scan more than 200 document formats (.doc, .ppt, .xls, .pdf, .zip, etc.). The benefits include enhanced security and email policy enforcement. This feature will enable:

- The filtering of attachments for keywords, phrases or regular expressions,
- The verification of attachment types to ensure, for example, that a .doc is really a .doc and not another format,

- The setting and testing for maximum number of files in an archive such as a .zip or .tar, and
- The check for attachment types inside archives and perform actions based on your email policy (e.g., if an .exe is within the .zip, then block or quarantine).

### **Security: Message Encryption with Transport Layer Security**

This feature delivers interoperability with digital certificates and permits the transfer or receipt of email using Transport Layer Security (TLS), a common gateway-to-gateway, secure communication method. The benefits of this feature are to encrypt sensitive information to specific domains, business partners or in relation to regulatory compliance (as described above). This feature also optionally authenticates the sender or receiver. This feature is only available in the Proofpoint Messaging Security Gateway.

### **Anti-spam: Improved Anti-spam Accuracy**

Proofpoint's Anti-spam Laboratory scientists continue to improve our award-winning Proofpoint MLX anti-spam technology for greater accuracy against the continual evolution of spam attacks. Proofpoint MLX now detects more than 100,000 significant spam attributes, an improvement of over 100% from previous versions. These attributes are distilled from millions of potential spam attributes and include new and updated indicators to accurately detect the latest phishing, "Joe Job", Dayeasian poisoning and hash-busting attacks that thwart other less sophisticated, signature-based solutions.

### **Network Security: Stateful Traffic Control with MLX Dynamic Reputation™**

MLX Dynamic Reputation technology constantly inspects SMTP connections at the IP address level, monitoring the number of connections, type of activity and monitoring the content of messages (i.e., detecting valid, spam or virus infected email) associated with each IP address. Proofpoint MLX machine learning technology is employed to dynamically assign a reputation score to each IP address based on observed behaviors. The benefit of this new technology is greater knowledge and control over your email stream based on the reputation you assign to senders (without reliance on suspect reputation scores of 3<sup>rd</sup> parties that may be affected by ISPs and Joe Job attacks). Based on new MLX Dynamic Reputation scores, the Proofpoint Email Firewall takes corrective action based on your policy such as blocking malicious IP

addresses and throttling connections from suspect IPs sending spam or harmful viruses. For example, one policy that can be established is to block or throttle senders if 80% or more messages sent in the last 1000 messages from a particular IP address were spam. The benefits of this feature include enhanced protection of Denial of Service (DoS) attacks and more efficient spam and threat detection.

### **Manageability: Simple Network Management Protocol Support**

Proofpoint now supports Simple Network Management Protocol (SNMP) for operating system-level services. SNMP is the Internet standard protocol for performance management of devices/applications over a network. This feature will allow users of enterprise performance management products such as IBM's Tivoli® and HP OpenView® to monitor the Proofpoint Messaging Security Gateway (for example, monitor operating system performance and free hard drive space). This feature is only available in the Proofpoint Messaging Security Gateway.

### **Manageability: Backup and Restore**

This feature allows the administrator to backup and restore the Proofpoint configuration data files on a scheduled or on-demand basis. In the unlikely event of corruption, the configuration backup and restore feature minimizes operational downtime.

### **Scalability: Greater Gateway Performance**

Proofpoint has increased the performance of all Proofpoint Message Security Gateways and therefore now supports the following number of messages per hour. Note that these numbers are the result of tests performed with all spam, virus and basic content filtering in operation.

- Each P600 supports 25,000 messages per hour
- Each P800 supports 60,000 messages per hour
- Each P1000 support 100,000 messages per hour

Proofpoint Message Security Gateways can easily be configured to operate in clusters to support tens of millions of messages per day.

Please contact a Proofpoint sales representative for more information on any of these new modules and features of the Proofpoint Protection Server or Proofpoint Messaging Security Gateway.

## PROFFPOINT MAINTENANCE SERVICES PROGRAM

**Overview:** Subject to Licensor executing the applicable Licensee agreement and paying for Maintenance Services as stated in the Order form, Proffpoint, Inc. ("Licensor") provides support in the form of Error Corrections, Licensed Product Updates, and Telephone, Email, or Web-based Support (all as defined below) for the Licensed Products. For Licensed Products under such maintenance, Maintenance Services are provided only for the current release and the most recent previous release of the Licensed Product where versions of the Licensed Product are designated by a number change to the right of the decimal point (such as ver. 1.1 to 1.2). In the event Licensee purchased an Appliance from Licensor, Section 6 shall apply to the Appliance. The initial commencement date of Maintenance Services is the Effective Date.

### 1. Description of Services

Maintenance Services consist of the following:

**1.1 Error Corrections.** Licensor shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Licensee in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Licensor and the associated response obligations set forth in Section 2 below ("Error Corrections").

**1.2 Licensed Product Updates.** Licensor shall provide to Licensee one (1) electronic copy of all published revisions to the printed documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Licensed Product, where versions of the Licensed Product are designated by a number change to the right of the decimal point (such as ver. 1.1 to 1.2) ("Licensed Product Updates").

**1.3 Support.** Licensor shall provide assistance to Licensee Monday through Friday, 9:00 a.m. to 5:30 p.m. Pacific Coast Time, excluding Licensor holidays ("Telephone Support"). Support calls can be initiated through Licensor's web-based tracking system ("Call Tracking System"), by telephone, or via email. Calls may be initiated by Licensee's named support contacts (up to 2 per contract). Licensor personnel are available to answer questions related to the Licensed Product and its performance with compatible hardware systems and when applicable, the Appliance. All calls will be tracked in the Call Tracking System and Licensee can view the status of Licensor's calls on the Call Tracking System. Assistance in the development of custom applications for and/or from Licensor's products is not included in Telephone Support. If Licensee desires to acquire such additional assistance, it may be available at Licensor's then-current consulting fee rates.

**1.4 24x7 Support.** For this optional service available at extra charge, Licensor shall only provide assistance for Priority 1 errors, as reasonably determined by Licensor, 24x7, 365 days per year. Handling of non-Priority 1 errors will take place during Licensor's normal working hours. Licensee shall also be entitled to an additional 2 named support contacts under 24x7 Support.

### 2. Priority Levels of Errors and Responses

In the performance of Maintenance Services, Licensor will apply the following priority ratings and initiate the following associated responses to Licensed Product errors reported by Licensee.

#### 2.1 Priority 1 Errors.

**Description:** A "Priority 1 Error" means a Licensed Product 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 Licensed Product is disabled.

**Licensor Response:** Priority 1 Errors shall receive an initial response within one (1) working hour, where working hours are the published hours of support coverage. In addressing a Priority 1 Error, Licensor shall use its reasonable commercial efforts to provide expeditiously a software patch or bypass or other work-around for such error ("Work-around") or to correct such error. Notwithstanding the foregoing sentence, "reasonable commercial efforts" shall include, but not be limited to, Licensor promptly initiating as many of the following procedures as necessary to expeditiously provide a Work-around or correction: (i) assigning

one or more senior Licensor engineers on a dedicated basis to correct or find a Work-around for the error; (2) notifying senior Licensor management that such errors have been reported and that steps are being taken to correct the error; (3) providing Licensee with periodic reports on the status of corrections; (4) continuing work to provide Licensee with a Work-around until a final solution is available; and (5) providing a final solution to Licensee as soon as it is available. Licensor will provide ongoing status information via Licensor's web-based Call Tracking System.

#### 2.2 Priority II Errors.

Description: A "Priority II Error" means a Licensed Product 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 Licensed Product is not operating as expected but can be worked around.

Licensor Response: Priority II Errors shall receive an initial response within two (2) working hours, where working hours are the published hours of support coverage. In addressing a Priority II Error, Licensor shall use its reasonable commercial efforts to provide in a timely manner a Work-around and/or fix for such error.

#### 2.3 Priority III Errors.

Description: A "Priority III Error" means a Licensed Product 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 Licensed Product.

Licensor Response: Priority III Errors shall receive an initial response within four (4) working hours, where working hours are the published hours of support coverage. In addressing a Priority III Error, Licensor shall use its reasonable commercial efforts to provide in a timely manner a fix or Work-around for such error.

#### 2.4 Priority IV Errors.

Description: A "Priority IV Error" means a Licensed Product program error which prevents some function or process from substantially meeting the documentation but does not significantly degrade the overall performance of the Licensed Product.

Licensor Response: Priority IV Errors shall receive an initial response within eight (8) working hours, where working hours are the published hours of support coverage. In addressing a Priority IV Error, Licensor shall use its reasonable commercial efforts to include the fix or Work-around for the error in the next Licensed Product Update.

#### 3 Licensee Cooperation.

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

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

Subject to the applicable Maintenance Services fees, Maintenance Service or assistance is limited to Licensed Products on platforms that are fully supported, running unaltered on the proper hardware configuration. Where applicable for a reported error, Licensor will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. In order to reproduce the problem in the most timely and efficient manner, the Licensee shall provide secure shell or Web-based remote access to the

of network. If the number of Mailboxes for such calendar quarter deviates from the usual number of Mailboxes quoted in Exhibit A or the Quotation, then the annual license fee specified hereunder may be adjusted on a pro rata basis.

5.3 Taxes and other Fees. The fees payable under this Section 4 are exclusive of and Licensee shall pay and hold Licensor harmless from all insurance and transportation fees and taxes, levies, imports, duties, VAT charges, fines or other charges of whatsoever nature however imposed by any country or any subdivision or authority thereof in any way connected with this Agreement or an instrument or agreement required hereunder, and all interest, penalties, or similar liabilities with respect thereto, except such taxes as are imposed on or measured by a party's net income or property ("Taxes").

All payments or reimbursements under this Agreement and any instrument or agreement required hereunder shall be made firm and clear and without deduction for any and all present and future Taxes. Payments due to Licensee under this Agreement and any instrument or agreement required hereunder shall be increased so that the amounts received by Licensee, after the provisions for Taxes and all taxes on such increases, will be equal to the amounts required under this Agreement and any instrument or agreement required hereunder if no Taxes were due on such payments. All items stated in this Agreement as being payable by Licensee to Licensor are exclusive of VAT or similar other taxes, which amounts shall be borne exclusively by Licensee. Licensee shall provide evidence that all applicable Taxes have been paid to the appropriate taxing authority by delivering to the Licensor receipts thereof within thirty (30) days after the due date for such tax payments.

5.4 Audit Right. Licensee shall keep and maintain accurate systems logs and payment records as are necessary to determine Licensee's compliance with the number of Mailboxes licensed and Fees due under this Agreement ("Records"). Licensor shall have the right to retain an independent certified public accountant, reasonably acceptable to Licensee, to audit the Records, at Licensor's expense, to determine whether the Fees paid correspond to the Fees owed, pursuant to the Records ("Audit"). If an Audit reveals that Licensee has been underpaid, Licensee shall immediately pay Licensor such underpaid amount plus interest thereon at the rate of one and a half percent (1.5%) per month. If such underpayment exceeds 20% of the fees due, then, without prejudice to Licensor's other rights and remedies, Licensor shall also pay for the cost of the Audit. The auditor shall be required to agree to keep

confidential all confidential information of Licensee learned during the course of the audit, except as necessary to report to Licensor. Any Audit shall be performed only during Licensee's normal business hours upon reasonable prior written notice, no more frequently than once per calendar year, and shall be performed in such a manner as to avoid unreasonable interference with Licensee's business operations.

6. Delivery Dates. Appliance shipment is subject to availability. Licensor will use commercially reasonable efforts to meet any delivery date(s) requested in Licensee's order, but Licensor will not be liable for its failure to meet such delivery dates. Any delivery dates provided by Licensor to Licensee are estimates only. Licensor may make shipments at any time before or after the requested delivery date.

7. Packing, Shipment and Title.

7.1 Packing. Appliance will be packed, if appropriate, for shipment and storage in accordance with standard commercial practices. All packing will conform to requirements of carrier's tariffs. When special or export packaging is requested or, in the opinion of Licensor, required under the circumstances, the cost of such special or export packaging, will be separately invoiced.

7.2 Shipment.

7.2.1 F.O.B. Point. All prices are F.O.B. Licensor's Cupertino location. Licensee will pay all transportation and insurance charges after delivery to the F.O.B. point.

7.2.2 Method of Shipment. Licensor will ship Appliance in accordance with Licensee's shipping instructions. If Licensee's does not give instructions or if Licensee's instructions are unsuitable, Licensor may ship Appliance by the most appropriate method.

7.3 Title and Risk of Loss. Title to the Appliance (except Software) and risk of loss and damage will pass to Licensee upon delivery to the F.O.B. point.

8. Confidentiality.

8.1 Confidential Information. The parties acknowledge that they have received or may receive confidential information relating to the other party's product, concept, invention and technology relating to such products, product, business and financial plans, customer lists and information and trade secrets in connection with the performance of this Agreement, together with such other information designated as confidential or proprietary by one party or which should be reasonably understood by the receiving party as confidential information of the disclosing party, ("Confidential Information"). Confidential Information shall not include any information which: (i) is or falls into the public domain without fault of the receiving party; or (ii) the receiving party can demonstrate was in its possession

prior to receipt thereof from the disclosing party; or (ii) the receiving party receives from a third party with no obligation of confidence to the disclosing party; or (iv) the receiving party independently develops without benefit of any Confidential Information of the disclosing party.

#### 3.3 Use of Confidential Information.

a) Except as expressly permitted or required in carrying out this Agreement, the receiving party of any Confidential Information disclosed by a disclosing party shall not use such Confidential Information to disclose such Confidential Information to any third party, either during the term of this Agreement or for three (3) years thereafter, without the prior written consent of the disclosing party. Thus, the receiving party shall use the disclosing party's Confidential information only to perform its obligations under this Agreement and to the extent permitted in the license granted hereunder. The receiving party shall protect such Confidential Information with the same degree of care used to protect its own proprietary information of like importance, but in any case using no less than a reasonable degree of care.

b) Nothing in this Agreement shall prohibit either party from disclosing Confidential Information of the other party if legally required to do so by judicial or governmental order or by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process in a judicial or governmental proceeding ("Required Disclosure"); provided that the disclosing party shall (i) give the other party prompt notice of such Required Disclosure prior to disclosure, (ii) cooperate with the other party in the event that it elects to consent such disclosure or seek a protective order with respect thereto and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested or required by the Required Disclosure.

c) The specific terms of this Agreement shall not be disclosed by either party to any third party without the prior written approval of the other party except (i) as may be required by law or by any competent government authority or (ii) such limited disclosure in confidence as may be reasonably necessary to either party's bankers, investors or potential investors, attorneys and accountants.

4.3 No License or Warranties for Confidential Information. All Confidential Information shall remain the property of the respective disclosing party. Except as otherwise provided in this Agreement, no license under any intellectual property right is granted or implied by the conveying of Confidential Information to the receiving party. None of the Confidential Information which may be disclosed by the disclosing party shall constitute any

representation, warranty, assurance, guarantee, or inducement by the disclosing party of any kind, and, in particular, with respect to the non-infringement of any intellectual property rights, or other rights of third persons or of the disclosing party.

#### 8.4 Publicity.

Subject to Licensee's prior approval, Licensee agrees to participate in one press release as a named customer and permit Licensor to produce a customer case study. Licensee shall make reasonable efforts to act as a customer, press, and analyst reference. Licensor may disclose Licensee as a customer in sales presentations, other press releases, product brochures, and other marketing material.

#### 9. Intellectual Property Rights.

Licensee acknowledges that Licensor and its licensors retain all intellectual property rights and title (including any patent, copyright, trademark, trade secret, and other rights) in and to all of Licensor's and their confidential information, trade secrets or other proprietary information, products, and the ideas, concepts, techniques, inventions, processes, Licensed Product or works of authorship developed, comprising, embodied in, or practiced in connection with the Services provided by Licensor hereunder ("Works"). Except for the rights expressly granted under this Agreement, Licensor and its licensors reserve and retain all intellectual property rights and title associated with Licensed Product and Works created by Licensor and derivatives of such Licensed Product and Works, including without limitation all Works or derivatives developed or created by Licensor or its personnel or contractors during the course of performing the Services for Licensee. Licensee does not acquire any rights, express or implied, in the Licensed Product and Services or in any modifications, enhancements, localizations, extensions or derivative works thereto, or in any materials provided hereunder.

#### 10. Warranty; Warranty Disclaimer.

10.1 Warranty. For ninety (90) days following the Effective Date ("Warranty Period"), Licensor warrants that (i) the Licensed Product will perform substantially in accordance with its end user documentation, provided that it is operated in accordance with the end user documentation on the designated operating systems, and (ii) the media containing the Licensed Product is free of defects in material and workmanship. Licensee's sole and exclusive remedy, and Licensor and its licensors' entire liability, for any material breach of this warranty, provided that Licensor is notified of such breach in writing within the Warranty Period, is for Licensor to repair or replace the Licensed Product. If neither of the foregoing is commercially feasible,

Licensor shall have the right to terminate this Agreement and refund to Licensee the license fee paid to Licensor hereunder.

**10. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LICENSED PRODUCT AND SERVICES ARE PROVIDED "AS IS" AND LICENSOR DOES NOT MAKE ANY WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE LICENSED PRODUCT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR DOES NOT WARRANT THAT (I) THE LICENSED PRODUCT WILL NOT GIVE FALSE POSITIVE RESULTS; (II) THE LICENSED PRODUCT WILL MEET LICENSEE'S REQUIREMENTS OR (III) THE LICENSED PRODUCT WILL BE ERROR FREE AND/OR OPERATE WITHOUT INTERRUPTION. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO LICENSOR. THE FOREGOING PROVISION SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

THE LICENSED PRODUCT AND SERVICES ARE NOT FAULT-TOLERANT AND IS NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE LICENSED PRODUCT OR SERVICES WOULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"). LICENSOR AND ITS LICENSORS EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED

#### WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

**11. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR ANY OTHER THIRD PARTY) FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS HOWSOEVER ARISING OUT OF OR RELATED TO THE LICENSED PRODUCT, SERVICES, OR THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. EXCEPT FOR A BREACH OF SECTION 8, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED FEES OWED BY LICENSEE TO LICENSOR IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF ANY CLAIM.

**12. Indemnification.** Each party at its own expense shall indemnify, defend and hold the other party free and harmless from any and all claims, damages, losses, costs, suits and expenses, including attorneys' and experts' fees, including but not limited to under Section 5.3 ("Indemnity Condition"), arising from any claim or contention (a) arising under this Agreement or (b) the breach of warranties, representations and obligations under this Agreement. Without limiting the generality of the foregoing, Licensor, at its own expense shall indemnify, defend and hold Licensee free and harmless, against any claim that the Licensed Product or Services infringes any U.S. patent, Berns Convention copyright or misappropriates any third party's trade secret.

a) Defense. Each party shall (1) give prompt written notice of any such claim, suit, expense or the like in accordance with the provisions of Section 13.1; (2) permit the other party to control and direct the defense or settlement of any such claim, suit or the like, provided, however that (a) the other party shall not enter into any settlement agreement that would result in any admission by a party or payment by the party without such party's prior written consent and (b) such party may at its option participate in the defense of such claim, suit or the like through separate counsel at its own expense, and (3) provides the other party all reasonable assistance (at the expense of such party) in connection with the defense or settlement of any such claim or suit.

b) Opinions. If the Licensed Product or Services is, or in Licensor's opinion is likely to be, held to be infringing, Licensor, at its expense and in

In sole discretion, may: (i) prevent the right to allow Licensee to continue to use the Licensed Product or Services; or (ii) modify or replace the Licensed Product or Services or infringing portions thereof to become non-infringing. If neither (i) nor (ii) is available or commercially feasible, Licensor shall have the right to terminate Licensee's right to use the affected portion of the Licensed Product or Services and Licensee shall be entitled to recover the fees paid by Licensee for that portion of the Licensed Product or Services, as applicable, provided over a three year period from the Effective Date.

e) **Extension.** Notwithstanding the foregoing, Licensor shall have an obligation to indemnify Licensee under this Section 12.1 to the extent any claim of intellectual property infringement is based upon or arising out of (i) any modification or alteration to the Licensed Product or Services not made by Licensor, in the event such infringement would have been avoided but for such modification or alteration, (ii) Licensee's continuance of allegedly infringing activity after being notified thereof, (iii) Licensee's failure to use corrections or enhancements made available by Licensor, and/or (iv) use of the Licensed Product or Services not in accordance with the applicable and user documentation or outside the scope of the license granted under this Agreement.

11.2 **Sole Remedy.** The foregoing remedies constitute Licensee's sole and exclusive remedies, and Licensor's entire liability, with respect to intellectual property infringement.

### 13. Third Party Software.

Notwithstanding anything in this Agreement to the contrary, certain third party software shall be governed by the terms provided by its licensors, as amended from time-to-time at <http://artima.com/licenses/>. Where required by contract, Licensor's licensors shall be entitled to enforce the rights of Licensor under this Agreement and those rights under this Agreement that are for the benefit of such licensor as if such licensor was a party to this Agreement.

### 14. Term and Termination.

14.1 **Term.** This Agreement shall commence as of the effective date and shall continue for two (2) years unless sooner terminated pursuant to Section 14.2. This Agreement shall then renew for additional one (1) year terms ("Renewal Term") at fees not to exceed the fees hereunder plus fifteen percent (15%), unless either party notifies the other party in writing at least ninety (90) days prior to the end of the Term or any Renewal Term.

14.2 **Termination.** This Agreement may be terminated as follows:

a) by either Licensor or Licensee upon thirty (30) days prior notice for any material default or breach of any of the material terms and conditions of this Agreement by the other party, unless the defaulting party has cured such failure or default within such 30-day period; or

b) by either party immediately upon notice, if (i) the other party is subject to a bankruptcy proceeding, whether voluntary or involuntary, which is not dismissed within sixty (60) days or makes an assignment for the benefit of creditors, or if a receiver, liquidator, administrator or trustee is appointed for such party's affairs is initiated and not dismissed within sixty (60) days or (ii) the other party is dissolved.

14.3 **Effect of Termination.** Upon termination of this Agreement for any reason, the provisions of Sections 6-12, 13.3, 14, and 15 shall survive. Upon termination of this Agreement, Licensee shall immediately pay Licensor all outstanding fees due under this Agreement and shall promptly return to Licensor, or, at Licensor's option, destroy, all copies, in any medium, of the Licensed Product and all Confidential Information of Licensor.

### 15. General Provisions.

15.1 **Notice.** Unless otherwise provided in this Agreement, all notices under this Agreement shall be in writing and shall be sent by facsimile with a hard copy confirmation of receipt, or sent by express delivery service to the other party addressed to the address specified on the first page of this Agreement. Either party may change its address by written notice to the other party in the manner set forth above. Notices shall be effective on the date of the hard copy confirmation of receipt in the case of delivery by facsimile or on the date the notice is delivered to the applicable address in the case of delivery by express overnight service.

15.2 **Force Majeure.** Except as otherwise set forth in this Agreement, a party will not be deemed to have materially breached this Agreement to the extent that performance of its obligations (except payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortage of materials or supplies beyond the reasonable control of such party, strike, labor dispute or walkout, or any other cause beyond the reasonable control of a party; provided that the party whose performance is delayed or prevented resumes performance of its obligations as soon as practicable.

15.3 **No Assignment.** Neither party shall assign, transfer or pledge this Agreement, or any interest or rights of any kind herein, without the prior written consent of the other party, except in connection with a merger, reorganization or sale of all or substantially all of the business or equity interests of the assigning

party. Subject to the foregoing, this agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

15.4 **Independence Contractors.** In performing this Agreement, each of the parties will operate as, and have the status of, an independent contractor. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between the parties. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party or its affiliates, whether express or implied, or to bind the other party or its affiliates in any respect whatsoever.

15.5 **Export Control.** Licensee acknowledges that the Licensed Product and Services may be subject to United States or other governments' export laws and regulations, and any use or transfer of the Licensed Product or Services must be permitted or authorized under those regulations. Except as expressly permitted in this Agreement, Licensee shall not export or import the Licensed Product or Services. To the extent any export or import is prohibited under this Agreement, Licensee shall be responsible for ensuring that it complies with all laws and regulations of the United States and other applicable governments relating to the Licensed Product or Services. Licensee at its own expense shall indemnify, defend and hold Licensor and its licensors' free and harmless from any and all claims, damages, losses, costs, actions and expenses, including attorneys' and experts' fees, arising from any breach of the foregoing obligation.

15.6 **Choice of Law; Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of law principles. The parties agree that the UN Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties agree that jurisdiction and venue for any matter arising out of or pertaining to this shall only be in the Federal Southern District Court for the Northern District of California or the state courts of the State of California for the County of Santa Clara.

**PROOFPOINT, INC.**

By: Raya K. Crooke  
Name: Lisa K. Crooke  
Title: CFO

15.7 **Injunctive Relief.** Licensee acknowledges and agrees that any breach of this Agreement relating to Licensor's intellectual property rights in the Licensed Product or Services would cause irreparable harm to Licensor for which recovery of money damages would be inadequate. Therefore, in addition to any and all remedies available to Licensor at law or in equity, Licensor shall be entitled to obtain injunctive relief to protect its intellectual property rights hereunder.

15.8 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained shall not, in any way, be affected or impaired thereby.

15.9 **Entire Agreement.** This Agreement, including without limitation, Exhibit A, the Quotation, and any Additional Quotations, and the Maintenance Services constitutes the entire agreement of the parties concerning its subject matter and supersedes any and all prior or contemporaneous, written or oral, negotiations, correspondence, understandings and agreements between the parties respecting the subject matter of this Agreement. In the event of any inconsistency or conflict, Exhibit A shall take precedence over the Quotation, Additional Quotation, or other ordering document. In the event that Exhibit A is left blank and there is no Quotation or Additional Quotation, Licensor reserves the right to accept a Licensee purchase order or other ordering document for the Licensed Product and Fees only and shall evidence such by delivering the Licensed Product and Appliances. Any additional terms in any Licensee purchase order or other ordering document are expressly rejected by Licensor.

15.10 **Execution.** This Agreement shall not be binding in whole or in part upon the parties unless and until duly executed by or on behalf of both parties hereto, in which event this Agreement shall be effective as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives in of the  
EFFECTIVE DATE: Port Santa Clara  
LICENSOR: [Signature]  
By: [Signature]  
Name: Robert J. Blotto  
Title: Purchasing Agent