

**FORCEPOINT
SUBSCRIPTION AGREEMENT**

ITEM # 18-1406

This Subscription Agreement (the "Agreement") is made as of October 22, 2018 (the "**Effective Date**"), by and between Forcepoint LLC with a business address at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA ("**Forcepoint**") and City of Santa Fe, with a business address at 2651 Siringo Road, Bldg E, Santa Fe, NM 87505 ("**Subscriber**").

1. Definitions.

"Affiliate" means an entity controlling, controlled by, or under common control with Subscriber, where control is established by a majority ownership (greater than fifty percent (50%)) in or over an entity; provided, however, that the term "Affiliate" shall not include an entity which is a direct competitor of Forcepoint.

"Application" or "App" means a third-party cloud based computing application identified at the time of Product implementation.

"Cloud Services" means Forcepoint's branded cloud service offering (excluding SaaS Web and SaaS Email), including content, updates, and upgrades thereto (but excludes products for which Forcepoint generally charges a separate fee), if any, and any reports generated as a result of use which are made available to Subscriber.

"Databases" means proprietary database(s) of URL addresses, email addresses, Malware, applications, analytical models, and other valuable information.

"Database Updates" means changes to the content of the Databases.

"Device" or "Seat" means (i) each computer (whether physical or virtual), electronic appliance or device that is authorized to access or use the Products, directly or indirectly; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber's or an Affiliate's email system or network. For SaaS Email, up to 5 aliases may be considered one Device. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single Device).

"Documentation" means the Product installation instructions, user manuals, setup posters, release notes, and operating instructions prepared by Forcepoint, in any form or medium, as may be updated from time to time by Forcepoint and made generally available to Subscriber.

"Error" means a material failure of the Product to conform to the Documentation, which is reported by Subscriber and replicable by Forcepoint.

"Forcepoint" means, as the context requires: (i) Forcepoint LLC, a Delaware limited liability company with its principal place of business at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759, USA; or (ii) Forcepoint International Technology Limited, with a principal place of business at Minerva House, Simmonscourt Road, Dublin 4, Ireland; or (iii) Forcepoint Federal LLC, with a principal place of business at 12950 Worldgate Drive, Suite 600, Herndon, VA 20170; or (iv) a corporation or entity controlling, controlled by or under the common control of Forcepoint with whom an Order has been placed referencing this Agreement.

"Order" means a purchase commitment mutually agreed upon between (1) Forcepoint and Subscriber or (2) a Forcepoint authorized reseller(s) and Subscriber.

"Permitted Capacity" means the number of Devices, Seats, Users, or other license metrics as set forth in the Order.

"Products" means Software, Databases, Database Updates, Software Upgrades, together with applicable Documentation and media, and if purchased pursuant to an Order, SaaS, Cloud Services, and Services Offerings.

"SaaS" or "Software as a Service" means Forcepoint's software-as-a-service offerings, including SaaS Web and/or SaaS Email, but excluding Cloud Services.

"Services Offerings" means Forcepoint's packaged professional services offerings described in a Forcepoint published services datasheet or services proposal.

"Software" means Forcepoint's proprietary software applications, in object code only.

"Software Upgrades" means certain modifications or revisions to the Software, but excludes products for which Forcepoint generally charges a separate fee.

"Subscriber" means the individual, company, Affiliates, or other legal entity that has placed an Order, is the ultimate end user of the Products, and if enrolling in SaaS, has registered its details on the Forcepoint portal at: Registration Portal.

"Subscription" means a non-exclusive, personal, nontransferable right to use the Products and use the output of the Services Offerings in accordance with this Agreement and the Order.

"Subscription Fees" means the agreed upon fees in an Order.

"Subscription Term" means the agreed upon time period in an Order.

"User" means (i) any person utilizing Subscriber's or an Affiliate's network with access to the Products directly or indirectly, who is an employee, temporary employee, customer, contractor, or guest of Subscriber or an Affiliate; or (ii) for SaaS Email a separate email address or account that receives electronic messages or data within Subscriber's or an Affiliate's email system or network. For SaaS Email, up to 5 aliases may be considered one User. (For example: A default email address of john.doe@acme.com with an alias of jdoe@acme.com counts as a single User).

"Virus" or "Malware" means computer software or program code that is designed to damage or reduce the performance or security of a computer program or data.

SaaS Email Definitions

"Average Emails" means the total number of emails processed in performance of SaaS Email divided by the number of Devices, Seats, or Users in the Order.

"Bulk Mail" means a large number of email messages with similar content sent or received in a single operation or a series of related operations.

"SaaS Email" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

"Open Relay" means an email server configured to receive email from an unauthorized third party and that forwards the email to other recipients who are not part of the server's email network.

"Spam" means a large number of unsolicited email messages (typically over 500 per month) with similar content sent or received in a single operation or a series of related operations.

SaaS Web Definitions

"Average Bandwidth" means the total bandwidth used in the performance of SaaS Web divided by the number of Devices, Seats, or Users in the Order.

"Web Content" means any data and requests for data processed by SaaS Web including but not restricted to that accessed using the Internet protocols HTTP and FTP.

"SaaS Web" means the online, Web-based Product (or Product component) provided by Forcepoint when set forth in the Order, including any associated offline components.

2. Product Subscription. Subject to the provisions contained in this Agreement, and timely payment of the applicable fees, Forcepoint hereby grants Subscriber, for the Subscription Term, a Subscription to use the Products and access the SaaS and Cloud Services (including any output of the Services Offerings) identified in the Order solely for Subscriber's internal business purposes up to the Permitted Capacity set forth in the Order. Subject to compliance with the terms of this Agreement, Subscriber may relocate or transfer the on-premise Product for use on a different server within its location. Subscriber shall not, and shall not permit anyone else to copy the on-premise Products, other than copies made solely for data backup and testing purposes. Any source code provided to Subscriber by Forcepoint is subject to the terms of this Agreement. Subscriber understands that its right to use the Products is limited by the Permitted Capacity purchased, and Subscriber and its Affiliates combined use may in no event exceed the Permitted Capacity authorized under the applicable Order. The Permitted Capacity provided in the Order(s) represents minimum amounts that Subscriber has committed to for the Subscription Term. If Subscriber's use exceeds the Permitted Capacity, Subscriber must purchase additional Permitted Capacity sufficient for the balance of the then-current Subscription Term to cover the excess use.

3. Provision of SaaS and Cloud Services.

3.1 Forcepoint will use commercially reasonable efforts to provide SaaS and Cloud Services for the Subscription Term. The then-current service levels for SaaS are incorporated by reference into this Agreement and may be found at: SaaS Service Level Agreement. The then-current Cloud Services service levels may be found at: Cloud Services Service Level Agreement. Forcepoint makes no service level commitments for email that is determined by Forcepoint to be Bulk Mail. Forcepoint makes no service level commitments for the Cloud Services' functionality to the extent it is used to monitor access to third-party services where the continued availability of the functionality is adversely impacted by the third-party's access policies.

3.2 If Forcepoint determines that the security or proper function of SaaS or Cloud Services would be compromised due to hacking, denial of service attacks or other activities originating from or directed at Subscriber's network, Forcepoint may immediately suspend SaaS or Cloud Services until the problem is resolved. Forcepoint will promptly notify and work with Subscriber to resolve the issues.

3.3 If SaaS or Cloud Services are suspended or terminated, Forcepoint will reverse all configuration changes made during SaaS or Cloud Services enrollment. It is Subscriber's responsibility to make the server configuration changes necessary to reroute email for SaaS Email, reroute Web Content for SaaS Web, and reroute traffic flowing through the Cloud Services.

3.4 Forcepoint may modify, enhance, replace, or make additions to the Products. Forcepoint may use Malware, Spam, and other information passing through the Products for the purposes of developing, analyzing, maintaining, reporting on, and enhancing the Forcepoint Products and services.

3.5 Forcepoint provides the Cloud Services scoring and content based on available information at the time it is gathered. Subscriber acknowledges that the scoring and content may be incomplete, misinterpreted, and is subject to change at any time. As such it is provided for informational purposes only, and Subscriber is solely responsible for decisions Subscriber makes regarding its use of Applications or services based on such information.

3.6 Prior to enrollment in SaaS Email and at any time during the Subscription Term, Forcepoint may test whether Subscriber's email system is acting as an Open Relay. If Forcepoint finds the system is an Open Relay, Forcepoint will inform Subscriber and may suspend SaaS Email until the problem is resolved.

3.7 If Subscriber is using the Products to distribute Spam or Malware, Forcepoint may suspend SaaS until the problem is resolved.

3.8 If in any one (1) calendar month the Average Emails per Device, Seat, or User is greater than: (i) ten thousand (10,000), Subscriber will make reasonable efforts to implement and maintain an accurate list of all valid email addresses belonging to Subscriber for which SaaS Email scans inbound or outbound email; or (ii) thirty thousand (30,000), Forcepoint may terminate Subscriber's SaaS Email Subscription upon thirty (30) days prior written notice to Subscriber.

3.9 If in any one (1) calendar month the Average Bandwidth per Device, Seat, or User is greater than 0.02Mbps, Forcepoint may terminate Subscriber's SaaS Web Subscription upon thirty (30) days prior written notice to Subscriber.

3.10 If in any one (1) calendar month the total bandwidth used in the performance of Cloud Services divided by the number of Devices or Users is greater than 0.02Mbps, Forcepoint may terminate Subscriber's Cloud Services Subscription upon thirty (30) days prior written notice to Subscriber.

4. Subscriber Obligations.

4.1 Subscriber will (a) comply with all applicable laws, statutes, regulations and ordinances, (b) only use the Products for legitimate business purposes which may include sending and receiving business and personal email or Web Content by its employees, and (c) not use the Products to construct or transmit Spam, Malware, or excessive email.

4.2 Subscriber acknowledges that certain Products may be configured by Subscriber to capture files for submission to other Products for Malware analysis. The Product analyzing files may archive Malware code extracted from such files. If Subscriber downloads such extracted Malware code, Subscriber recognizes the risk associated with Malware code, and any use by Subscriber of Malware code is at Subscriber's sole risk and liability.

4.3 Subscriber must (a) have the authority, rights, or permissions to use all domains registered to the Products, (b) obtain any necessary consents from its employees, (c) maintain all necessary rights to access Application(s), and (d) maintain all permissions, authorizations, licenses, and approvals to access and use the data and information inputted, displayed, or processed (including all output and data developed or derived) as a result of Subscriber's use of the Products to access and use data sources and systems.

4.4 To the maximum extent permitted by law, Subscriber agrees that Forcepoint will not be responsible for any loss, damage or costs incurred in connection with any claims, demands, suits, or proceedings ("Claims") made or brought against Forcepoint by a third party alleging or related to Subscriber's (i) violation of its obligations in this Section 4; (ii) infringement of intellectual property rights; (iii) acts or omissions in relation to Subscriber provided hardware, equipment, or third party software licenses used in connection with the Products; (iv) civil or criminal offenses; (v) transmission or posting of obscene, indecent, or pornographic materials; (vi) transmission or posting of any material which is slanderous, defamatory, offensive, abusive, or menacing or which causes annoyance or needless anxiety to any other person; or (vii) transmission of information through the Products.

4.5 Subscriber agrees to cooperate with Forcepoint personnel providing any Services Offerings, and to provide reasonable assistance, including: (i) gathering relevant supporting documentation; (ii) ensuring appropriate Subscriber personnel are assigned to the project and are able to devote sufficient time to facilitate the project; (iii) granting resource access to information, systems, and licenses related to the scope of the project; (iv) provision of building and network access both before and after normal business hours, work space, and workstations for each of the Forcepoint personnel, logon IDs and security access to all required Products, and adequate test environment, and any reasonable and appropriate data to perform the Services Offerings. For the avoidance of doubt, Forcepoint will remain responsible for the continued compliance with its obligations under this Agreement by its employees, agents, representatives, and subcontractors that it may use in the provisioning of Services Offerings subject to the terms of this Agreement.

5. Technical Support.

5.1 Product technical support includes (i) standard technical support, Error corrections or workarounds so that the Products operate in substantial conformance with the Documentation, and (ii) the provision of Database Updates and Software Upgrades, if and when available, all of which are provided under the then-current Forcepoint technical support policies, as described at: Technical Support Description. Standard technical support includes online website and portal access, and telephone support during business hours. Database Updates and Software Upgrades will be provided to Subscriber only if Subscriber has paid the appropriate Subscription Fees for the Permitted Capacity. Forcepoint may require Subscriber to install Software Upgrades up to and including the latest release. Enhanced support offerings are only available for additional cost and are also subject to the terms of this Agreement.

5.2 Forcepoint's obligation to provide technical support is limited to: (i) a Product that has not been altered or modified by anyone other than Forcepoint or its licensors; (ii) a release for which technical support is provided; (iii) Subscriber's use of the Product in accordance with the Documentation; and (iv) errors and malfunctions caused by systems or programs supplied by Forcepoint. If an Error has been corrected or is not present in a more current version of the Product, Forcepoint will provide the more current version via technical support, but will not have any obligation to correct such Error in prior versions.

5.3 Technical support for on-premise Products may be limited to the most current release and the most recent previous sequential major release of the Product. Forcepoint reserves the right to terminate the Subscription or increase the associated fees upon 60 days prior written notice should Subscriber not stay current with a supported release in accordance with this Section.

6. Intellectual Property Rights. The Products and all related intellectual property rights are the exclusive property of Forcepoint or its licensors. All right, title and interest in and to the Products, any modifications, translations, or derivatives thereof (including any related scripts, tools, and know-how), even if unauthorized, and all applicable rights in patents, copyrights, trade secrets, trademarks, and all intellectual property rights in the Products remain exclusively with Forcepoint or its licensors. The Products are valuable, proprietary, and unique, and Subscriber agrees to be bound by and observe the proprietary nature of the Products. The Products contain material that is protected by patent, copyright and trade secret law, and by international treaty provisions. The Products include software products licensed from third parties. Such third parties have no obligations or liability to Subscriber under this Agreement but are third party beneficiaries of this Agreement with respect to any defenses that Forcepoint may have under this Agreement. Subscriber may not assign more than twenty (20) administrators to administer certain Forcepoint products. All rights not granted to Subscriber in this Agreement are reserved to Forcepoint and its licensors. No ownership of the Products passes to Subscriber. Forcepoint may make changes to the Products at any time without notice. Except as otherwise expressly provided, Forcepoint grants no express or implied right under Forcepoint patents, copyrights, trademarks, or other intellectual property rights. Subscriber may not remove any proprietary notice of Forcepoint or any third party from the Products or any copy of the Products, without Forcepoint's prior written consent.

7. Protection and Restrictions.

7.1 Each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain confidential technical and business information which the Disclosing Party desires the Receiving Party to treat as confidential. "Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically or by inspection of tangible objects (including without limitation documents, prototypes, equipment, technical data, trade secrets and know-how, product plans, Products, services, suppliers, customer lists and customer information, prices and costs, markets, software, databases, developments, inventions, processes, formulas, technology, employee information, designs, drawings, engineering, hardware configuration information, marketing, licenses, finances, budgets and other business information), which is designated as "Confidential," "Proprietary" or some similar designation at or prior to the time of disclosure, or which should otherwise reasonably be considered confidential by the Receiving Party. Confidential Information may also include information disclosed to a Disclosing Party by third parties. Confidential Information shall not, however, include any information which the Receiving Party can document (i) was publicly known and made generally available prior to the time of disclosure by the Disclosing Party or an authorized third party; (ii) becomes publicly known and made generally available after disclosure through no action or inaction of the Receiving Party in violation of any obligation of confidentiality; (iii) is already in the possession of the Receiving Party at the time of disclosure; (iv) is lawfully obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Each party agrees that all Confidential Information of the other party will be treated by the Receiving Party as non-public confidential information and will not be disclosed to any person other than Disclosing Party and employees and contractors of Receiving Party on a need to know basis and that Receiving Party will protect the confidentiality of such Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. Furthermore, each party agrees to only use the Confidential Information of the other party for purposes of carrying out its rights and obligations under this Agreement.

7.2 Subscriber will take all reasonable steps to safeguard the Products to ensure that no unauthorized person has access and that no unauthorized copy, publication, disclosure or distribution, in any form is made. The Products contain valuable, confidential information and trade secrets and unauthorized use or copying is harmful to Forcepoint. Subscriber may use the Products only for the internal business purposes of Subscriber. Subscriber will not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Products to any user other than Subscriber's employees and individual contractors who have a need to such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products; (v) modify, adapt, translate or otherwise make any changes to the Products or any part thereof; (vi) use the Products to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Forcepoint's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Products; (viii) otherwise use or copy the same except as expressly permitted herein; (ix) use any third party software included in the Products independently from the Forcepoint proprietary Products. Subject to the terms of this Agreement, Subscriber may allow its agents and independent contractors to use the Products solely for the benefit of Subscriber; provided, however, Subscriber remains responsible for any breach of this Agreement. Any other use of the Products by any other entity is forbidden and a violation of this Agreement. Subscriber must not use the Products to filter, screen, manage or censor Internet content for consumers without permission from the affected consumers and Forcepoint's express prior written approval which may be withheld in Forcepoint's sole discretion. If any additional third party end-user license agreement is (a) attached to this Agreement or the Order, or (b) included in the Product

"about" file, "readme" file or Documentation, then Subscriber's use of the third party software is further restricted by and subject to the third party licensor's end-user license agreement.

8. Financial Terms. This Section applies if Subscriber has placed an Order directly with Forcepoint: Fees and payment terms are specified in the applicable Order. Except as otherwise expressly specified in the Order, all recurring payment obligations start from the execution of the Order. Forcepoint may increase recurring fees at any time upon 60 days written notice. Unless otherwise specified in the Order, payment of all fees is due 30 days after the invoice date. Interest accrues on past due balances at the lesser of 1½% per month or the highest rate allowed by law. Failure to make timely payments is a material breach of the Agreement and Forcepoint will be entitled to suspend any or all of its performance obligations hereunder in accordance with the provisions of Section 12 and to modify the payment terms, including requiring full payment before Forcepoint performs any obligations in this Agreement. Subscriber will reimburse Forcepoint for any expenses incurred, including interest, in collecting amounts due to Forcepoint hereunder that are not under good faith dispute by Subscriber. Amounts paid or payable for Products are not contingent upon the performance of any consulting or other professional services. Forcepoint's reasonable travel and lodging expenses incurred by Forcepoint in the performance of services on Subscriber's site will be billed separately at actual cost. Subscriber is responsible for payment of all taxes (excluding those on Forcepoint's net income) arising out of this Agreement, except to the extent a valid tax exemption certificate or other written documentation acceptable to Forcepoint to evidence Subscriber's tax exemption status is provided by Subscriber to Forcepoint prior to the delivery of Products or services.

9. Limited Warranty; Remedies; Disclaimer.

9.1 For the Subscription Term, Forcepoint warrants that the Products (other than Services Offerings), as updated from time to time by Forcepoint and used in accordance with the Documentation and the Agreement by Subscriber, will operate in substantial conformance with the Documentation under normal use. Forcepoint warrants that Services Offerings will be performed in a professional and workmanlike manner and Forcepoint will comply with all applicable laws in providing the Services Offerings. Forcepoint does not warrant that: (A) the Products will (i) be free of defects, (ii) satisfy Subscriber's requirements, (iii) operate without interruption or error, (iv) always locate or block access to or transmission of all desired addresses, emails, Malware, applications and/or files, or (v) identify every transmission or file that should potentially be located or blocked; (B) data contained in the Databases will be (i) appropriately categorized or (ii) that the algorithms used in the Products will be complete or accurate; or (C) data contained in and risk scoring from the Cloud Services will be complete or interpreted correctly.

9.2 Subscriber must promptly notify Forcepoint in writing of a claim. Provided that such claim is reasonably determined by Forcepoint to be Forcepoint's responsibility, Forcepoint shall, within thirty (30) days of its receipt of Subscriber's written notice, (i) correct the Error or provide a workaround; (ii) provide Subscriber with a plan reasonably acceptable to Subscriber for correcting the Error; or (iii) if neither (i) nor (ii) can be accomplished with reasonable commercial efforts from Forcepoint at Forcepoint's discretion, then Forcepoint may terminate the affected Product Subscription and Subscriber will be entitled to a refund of the unused Subscription Fees paid for the affected Product applicable to the balance of the then-current Subscription Term. This paragraph sets forth Subscriber's sole and exclusive remedy and Forcepoint's entire liability for any breach of warranty or other duty related to the Products.

9.3 This warranty is void and Forcepoint is not obligated to provide technical support if a claimed breach of the warranty is caused by: (i) any unauthorized modification of the Products or tampering with the Products, (ii) use of the Products inconsistent with the accompanying Documentation, (iii) Subscriber's failure to use any new or corrected versions of the Product made available by Forcepoint; or (iv) breach of this Agreement by Subscriber or its users.

9.4 THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE IN LIEU OF, AND FORCEPOINT, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT.

10. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FORCEPOINT, ITS AFFILIATES, ITS LICENSORS OR RESELLERS WILL NOT BE LIABLE FOR (I) LOST PROFITS; (II) LOSS OF BUSINESS; (III) LOSS OF GOODWILL, OPPORTUNITY, OR REVENUE; (IV) SUBSCRIBER'S DECISIONS BASED ON ITS INTERPRETATION OF THE OUTPUT FROM THE PRODUCTS; NOR (V) ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER FORESEEABLE OR UNFORESEEABLE INCLUDING, BUT NOT LIMITED TO CLAIMS FOR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, PRIVACY, ACCESS TO OR USE OF ANY ADDRESSES, EXECUTABLES OR FILES THAT SHOULD HAVE BEEN LOCATED OR BLOCKED, NEGLIGENCE, BREACH OF CONTRACT, TORT OR OTHERWISE AND THIRD PARTY CLAIMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FORCEPOINT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY

FORCEPOINT FOR THE APPLICABLE PRODUCTS OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE FOR THE PRODUCTS THAT DIRECTLY CAUSED THE LIABILITY.

11. Indemnification. In the event of a third-party claim, suit or proceeding against Subscriber asserting that use of the Product as permitted in this Agreement infringes a third-party's patent, copyright, or trademark right recognized in any jurisdiction where the Product is used, Forcepoint at its expense will defend Subscriber and indemnify Subscriber against costs, expenses (including reasonable attorneys' fees), and damages payable to any third party in any such suit or cause of action that are directly related to that claim. Forcepoint's obligation under this Section is contingent upon Subscriber providing Forcepoint with: (a) prompt written notice of the suit or claim; (b) the right to solely control and direct the defense of the claim; and (c) reasonable cooperation with Forcepoint. Forcepoint will have no liability for any claim of infringement resulting from: (i) modification of the Products by anyone other than Forcepoint; (ii) a combination of the Products with other hardware or software not provided by Forcepoint; or (iii) failure by Subscriber to implement Software Upgrades and Database Updates. In the event the Products, in Forcepoint's opinion, are likely to or do become the subject of a claim of infringement, Forcepoint may at its sole option and expense: (x) modify the Products to be non-infringing while preserving equivalent functionality; (y) obtain a license for Subscriber's continued use of the Products; or (z) terminate this Agreement and the license granted hereunder, accept return of the Products and refund to Subscriber the unused Subscription Fees paid for the affected Product applicable to the balance of the then-current Subscription Term. THIS SECTION SETS FORTH FORCEPOINT'S ENTIRE LIABILITY AND OBLIGATION AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THE PRODUCTS.

12. Term and Termination.

12.1 This Agreement continues in full force and effect until the expiration or termination of the Order(s), unless otherwise terminated earlier as provided hereunder. All Orders are non-cancellable, and there shall be no fee adjustments or refunds for any reason, including decreases in usage, or otherwise during the Subscription Term. Upon termination or expiration of the Subscription Term, Subscriber's right to use the Products terminates.

12.2 Product evaluation subscriptions are available for a period of up to thirty (30) days, and limited availability Product subscriptions may be available for the period of time determined by Forcepoint. Evaluation subscriptions and limited availability Product subscriptions are each subject to the terms and conditions of this Agreement, except however that (i) evaluation subscriptions and limited availability Product subscriptions may only be used to evaluate and facilitate Subscriber's decision to purchase a subscription to Products, and (ii) evaluation subscriptions and limited availability Product subscriptions are provided by Forcepoint on an AS IS and AS AVAILABLE basis without warranties of any kind. At the end of the evaluation period or the limited availability Product subscription period, Subscriber must place an Order and pay the applicable Subscription Fees or this Agreement terminates as related to the evaluation subscription or limited availability Product subscription. Subscriber's continued use of the Products after an evaluation or limited availability Product subscription period is subject to this Agreement.

12.3 Either party may terminate this Agreement immediately upon written notice at any time if: (i) the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of payment terms which shall have a ten (10) day cure period; or (ii) the other party ceases business operations; or (iii) the other party becomes insolvent, generally stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within 90 days after commencement of one of the foregoing events). Upon notification of termination by either party, Subscriber must uninstall any Products, cease using and destroy or return all copies of the Products to Forcepoint, and to certify in writing that all known copies thereof, including backup copies, have been destroyed. Sections 1, 6-12, and 14-17 shall survive the termination of this Agreement.

12.4 Subscriber may terminate this Agreement for convenience at any time with thirty (30) days' prior written notice to Forcepoint; for the avoidance of doubt, no fee adjustment or refund will be made available to Subscriber in the event Subscriber terminates this Agreement pursuant to this Section 12.4.

12.5 Forcepoint will be entitled to suspend any or all services upon 10 days written notice to Subscriber in the event Subscriber is in breach of this Agreement. Forcepoint may impose an additional charge to reinstate service following suspension.

13. Compliance with Laws. Each party will comply with all applicable laws and regulations, including but not limited to the European Union's General Data Protection Regulation, that may apply to issues including the protection of personal data, and anti-bribery. Subscriber must obtain any required consents (including employee consent addressing the interception, reading, copying or filtering of emails and their attachments) and any local government permits, licenses, or approvals required to use the Products. Neither party will use any data obtained via the Products for any unlawful purpose. Each party's obligations with respect to the treatment of personal data submitted to Forcepoint pursuant to this Agreement are set forth in the terms of the Forcepoint Data Processing Agreement.

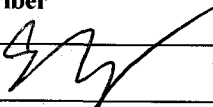

14. Rights of Government Subscribers. The Products meet the definition of "commercial item" in Federal Acquisition Regulation ("FAR") 2.101, were developed entirely at private expense, and are provided to Government Subscribers exclusively under the terms of this Agreement. Software, including Software Upgrades, is "commercial computer software" and applicable Documentation and media are "commercial computer software documentation," as those terms are used in FAR 12.212 and DFARS 227.7202. Use of the Products by the U.S. Government constitutes acknowledgment of Forcepoint's proprietary rights therein, and of the exclusive applicability of this Agreement.

15. Export. Commodities, technology and software, including the Products (collectively referred to as "items") are subject to the export control laws of the United States and other countries that may lawfully control the export of such items. Moreover, the furnishing of support services with respect to items that are controlled as defense or military items may also be subject to such laws. Subscriber agrees it will not transfer such items or furnish such services except in compliance with the export laws of the United States and any other country that may lawfully control the export of such items or the provision of such services. Subscriber further agrees, to the maximum extent permitted by law, Forcepoint will not be responsible for any claims, liabilities, penalties, forfeitures, and associated costs and expenses (including attorneys' fees) due to Subscriber's non-compliance with applicable export laws, rules and regulations. Subscriber agrees to immediately notify Forcepoint of any violation of any export law, rule or regulation, which may affect Forcepoint or relate to the activities covered under this Agreement.

16. Compliance. Without prejudice to Forcepoint audit rights pursuant to this Section, upon Forcepoint's request Subscriber will document and certify that use of the Products is in full conformity with the use rights granted under this Agreement and the applicable Order. During the term of this Agreement and for a period of one year following its termination, Subscriber will maintain and make available to Forcepoint records sufficient to permit Forcepoint or Forcepoint's independent auditor to verify, upon ten days' written notice, Subscriber's compliance with this Agreement. Subscriber will provide reasonable assistance, personnel, access to Forcepoint components within Subscriber's systems, and information necessary to facilitate the timely completion of Forcepoint's compliance verification. The audit will be performed during regular business hours. If Subscriber is not in compliance with this Agreement, Subscriber will reimburse Forcepoint's reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor), and Subscriber will promptly cure any noncompliance, including without limitation payment of any and all fees owed to Forcepoint during the period of noncompliance. The rights and remedies under this Section are in addition to any other rights Forcepoint may have under this Agreement. Additionally, Forcepoint may at any time, without notice, during the term of this Agreement access Subscriber's system, subject to applicable local law, to determine whether Subscriber and its users are complying with the terms of this Agreement. Subscriber acknowledges that the Products may include a license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.

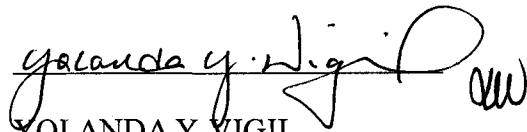
17. General. For the avoidance of doubt, as between the parties, each party and their employees, agents, or consultants will at all times maintain the status of independent contractor and each party agrees not to purport to bind the other to any obligation not agreed to herein. Each party will at all times maintain appropriate levels of insurance during the Subscription Term of this Agreement in such appropriate amounts no less than what is customary in such industry and will cover such party's reasonably foreseeable liabilities under this Agreement. For the purposes of customer service, technical support, and as a means of facilitating interactions with its end-users, Forcepoint may periodically send Subscriber messages of an informational or advertising nature via email, and provide account information to related third-parties (e.g. Subscriber's reseller). Information will be processed by Forcepoint in accordance with the Privacy Policy and applicable data privacy laws. Subscriber may at any time update its communications preferences on Forcepoint.com or by sending an email to privacy@forcepoint.com. Subscriber acknowledges and agrees that if it chooses not to receive informational or advertising messages, then it will not receive Forcepoint emails concerning upgrades and enhancements to Products. However, Forcepoint may still send emails of a technical nature. Subscriber acknowledges that Forcepoint may use Subscriber's company name only in a general list of Forcepoint customers. Forcepoint owns any suggestions, ideas, enhancement requests, feedback, or recommendations provided by Subscriber relating to the Products. Forcepoint may use non-identifying and aggregate usage and statistical information related to Subscriber's and its users' use of the Products for its own purposes outside of the Agreement. Subscriber may not transfer any of Subscriber's rights to use the Products or assign this Agreement to another person or entity, without first obtaining prior written approval from Forcepoint. Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid. Notices sent to Forcepoint must be sent to the attention of the General Counsel at 10900-A Stonelake Blvd., 3rd Floor, Austin, TX 78759 USA. Notices are considered to have been given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this paragraph. Any dispute arising out of or relating to this Agreement or the breach thereof shall be governed by the federal laws of the United States and the laws of the State of New Mexico, USA, for all claims arising in or related to the United States, Canada, Japan, or Mexico and Dublin, Ireland for all other claims, without regard to or application of choice of laws, rules or principles. Forcepoint may seek injunctive relief in any court of competent

jurisdiction to protect its intellectual property. Both parties expressly waive any objections or defense based upon lack of personal jurisdiction or venue. Neither party will be liable for any delay or failure in performance to the extent the delay or failure is caused by events beyond the party's reasonable control, including, fire, flood, acts of God, explosion, war or the engagement of hostilities, strike, embargo, labor dispute, government requirement, civil disturbances, civil or military authority, disturbances to the Internet, and inability to secure materials or transportation facilities. This Agreement constitutes the entire agreement between the parties regarding the subject matter herein and the parties have not relied on any promise, representation, or warranty, express or implied, that is not in this Agreement. Subscriber agrees that this Agreement is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Forcepoint regarding future functionality or features. Any waiver or modification of this Agreement is only effective if it is in writing and signed by both parties or posted by Forcepoint at: [Legal Information](#). All pre-printed or standard terms of any Subscriber's purchase order or other business processing document have no effect, and the terms and conditions of this Agreement will prevail over such forms, and any additional, inconsistent, conflicting, or different terms in such forms will be void and of no force and effect. In the event of a conflict between the terms of this Agreement and the terms of an Order, the terms of this Agreement prevail. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be interpreted so as reasonably to affect the intention of the parties. This Agreement may be signed in counterparts, and delivered by electronic image or facsimile, and such image or facsimile counterparts shall be valid and binding on the parties hereto with the same effect as if original signatures had been exchanged. Forcepoint is not obligated under any other agreements unless they are in writing and signed by an authorized representative of Forcepoint.


Subscriber	Forcepoint
By: 	By: 
Print Name: <u>Enklitzenky</u>	Print Name: <u>Matt Santangelo</u>
Title: <u>City Manager</u>	Title: <u>CFO</u>
Date: <u>12/20/18</u>	Date: <u>October 22, 2018</u>



ATTEST:



YOLANDA Y. VIGIL
CITY CLERK

APPROVED AS TO FORM:

 10/30
ERIN MCSHERRY, CITY ATTORNEY

APPROVED:


MARY MCCOY, FINANCE DIRECTOR

62252.530710
Citywide Business Units and line items 

Reseller

En Pointe CRS # 03-320224-00-9

Business Registration #18-00153947