

## **SCHEDULE TO HOOTSUITE SAAS AGREEMENT – PROOFPOINT PRODUCTS**

If Customer purchases Proofpoint Products, including without limitation Nexgate Services, in an Authorization Form, this Schedule, and the attached Nexgate Services Exhibit ("Nexgate Exhibit"), shall form a binding contract between Customer and Proofpoint, Inc., a Delaware corporation, with offices at 892 Ross Drive, Sunnyvale, CA 94089 USA ("Proofpoint"), made as of the date Customer subscribes to the applicable Proofpoint Products. Customer's purchase and use of Proofpoint Products shall also be subject to the applicable Proofpoint Product Exhibit for each Proofpoint Product purchased by Customer in the form as mutually agreed by Customer and Proofpoint (each, a "Product Exhibit"). The applicable Product Exhibit for Customer's purchase and use of Proofpoint's Nexgate Services Product is the Nexgate Exhibit attached hereto. In the event of any conflict between this Schedule, each Product Exhibit, and the applicable Authorization Form, the order of precedence will be the following: the applicable Product Exhibit(s), this Schedule, and then the applicable Authorization Form(s); provided, however, in the event of any specific conflict between a Product Exhibit and this Schedule, the Product Exhibit shall control solely with respect to the subject matter of that Product Exhibit.

BY SUBSCRIBING TO THE PROOFPOINT PRODUCTS, CUSTOMER AGREES THAT THIS SCHEDULE IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN PROOFPOINT AND CUSTOMER RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PROPOSALS OR PRIOR OR CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO, ANY TERMS CONTAINED IN CUSTOMER'S PURCHASE ORDER.

### **1. Additional Definitions.** In this Schedule:

**"Affiliate"** means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party. "Control," for purposes of this definition, means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

**"Appliance(s)"** means a virtual or hardware device containing the Software.

**"Authorization Form"** means an ordering document for a Proofpoint Product issued by Hootsuite Media Inc. ("Hootsuite"). Each Authorization Form including an order for a Proofpoint Product will be, for the purposes of such Proofpoint Products, subject to each applicable Product Exhibit and this Schedule.

**"Confidential Information"** has the meaning set forth in Section 3.

**"Documentation"** means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or license of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer's purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product.

**"Extension Term"** means each additional one year subscription term for which the subscription term for a Proofpoint Product is extended pursuant to Section 7.

**"Initial Term"** means the initial subscription term for a Proofpoint Product that is defined on the applicable Authorization Form.

**"Mailbox"** means a separate account on Customer's e-mail server for sending or receiving messages or data within Customer's e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer's email server for the receipt of messages or data within Customer's e-mail system or network.

**"Professional Services"** means installation, implementation, data migration or other consulting services provided by Proofpoint to Customer.

**"Proofpoint Products"** means the Appliance, Service or Software licensed and/or purchased by Customer under an Authorization Form.

**"Reseller"** means a third-party authorized by Proofpoint to resell Proofpoint Products directly to Customer.

**"Service"** means any Proofpoint Product licensed on a hosted basis as software as a service.

**"Software"** means any Proofpoint binary software programs licensed by Proofpoint to Customer, together with all the Software Updates.

**"Software Updates"** means all Software updates and enhancements that Proofpoint generally makes available at no additional charge to its customers who are current in payment of applicable Subscription Fees or otherwise provides to Customer under this Schedule.

**"SOW"** means each statement of work, engagement letter or other writing signed by Proofpoint and Customer that describes the Professional Services provided by Proofpoint. Each SOW shall reference this Schedule and will be subject to the terms and conditions hereof.

**"Subscription Fees"** mean the fees paid by Customer for the right to use the applicable subscription based Proofpoint Products for the given Initial Term or Extension Term, as applicable.

**"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

**"Term"** means the Initial Term and any Extension Term applicable to each Authorization Form.

"Work Product" means all work product developed or created by Proofpoint during the course of providing support or Professional Services to Customer. Notwithstanding anything herein to the contrary, Work Product shall not include any Customer Data (as defined in the applicable Product Exhibit) or Customer Confidential Information.

## 2. GENERAL LICENSE TERMS

**2.1 License.** Subject to the terms of this Schedule and each applicable Product Exhibit, Proofpoint grants to Customer and its Affiliates a royalty-free, non-exclusive, limited term, non-transferable (except to a successor in interest as permitted hereunder) license to use the Proofpoint Products purchased by Customer during the Term in accordance with the Documentation, in the quantities specified in the applicable Authorization Form, and solely for Customer's own internal business purposes. Customer may use the Documentation in connection with the license granted hereunder.

**2.2 Acceptable Use.** As between Customer and Proofpoint, Customer is responsible for all activities conducted by its users under its Mailbox accounts. Customer specifically agrees to limit the use of the Proofpoint Products to those parameters set forth in the applicable Authorization Form. Without limiting the foregoing, Customer specifically agrees not to: (i) resell, sublicense, lease, time-share or otherwise make a Proofpoint Product (including the Documentation) available to any third party; (ii) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein; (iii) modify, copy or create derivative works based on a Proofpoint Product; (iv) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from a Proofpoint Product, in whole or in part; (v) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface; (vi) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer organization without Proofpoint's prior written consent; (b) infringement on the intellectual property rights of any third party or any rights of publicity or privacy; (c) violation of any law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, anti-discrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Software and/or Documentation or any portion thereof. Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk or unsolicited emails or e-mails sent from an account not assigned to an individual.

## 3. CONFIDENTIALITY

**3.1 Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" or the like, or, that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Schedule (including pricing and other terms reflected in and Authorization Form), the Software, Customer Data, business and marketing plans, technology and technical information, product designs, and business processes.

**3.2 Exclusions.** "Confidential Information" shall not include information that (i) is or becomes a matter of public knowledge through no act or omission of the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure without restriction on disclosure; (iii) is lawfully disclosed to the Receiving Party by a third party that lawfully and rightfully possesses such information without restriction on disclosure; (iv) information that the Receiving Party can document resulted from its own research and development, independent of receipt of the disclosure from the Disclosing Party; or (v) is disclosed with the prior written approval of the Disclosing Party.

**3.3 Non-Disclosure.** Receiving Party shall not (i) disclose any Confidential Information of the Disclosing Party to any third party, except as otherwise expressly permitted herein or (ii) use any Confidential Information of Disclosing Party for any purpose outside the scope of this Schedule or in any manner that would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States, except with Disclosing Party's prior written consent. The Receiving Party shall not make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The Receiving Party agrees to hold the Disclosing Party's Confidential Information in confidence and to take all precautions to protect such Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like nature, but in no case shall the Receiving Party employ less than reasonable precautions. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information. This Schedule will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required to by law or valid order of a court or other governmental authority; provided, however, to the extent permitted by law, the responding party shall give prompt written notice to the other party to enable the other party to seek a protective order or otherwise prevent or restrict such disclosure and, if disclosed, the scope of such disclosure is limited to the extent possible.

**3.4 Return and Destruction.** The Receiving Party will return all copies of the Disclosing Party's Confidential Information upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Schedule. Instead of returning such Confidential Information, the Receiving Party may destroy all copies of such Confidential Information in its possession; provided, however, the Receiving Party may retain a copy of any Confidential Information disclosed to it solely for archival purposes, provided that such copy is retained in secure storage and held in the strictest confidence for so long as the Confidential Information remains in the possession of the Receiving Party.

**3.5 Injunctive Relief.** The parties acknowledge and agree that the confidentiality obligations set forth in this Schedule are reasonable and necessary for the protection of the parties' business interests, that irreparable injury may result if they are breached, and that in the event of any actual or potential breach of Section 3, that the non-breaching party may have no adequate remedy at law and shall be entitled to seek injunctive and/or other equitable relief as may be deemed proper by a court of competent jurisdiction.

## 4. OWNERSHIP

**4.1 Proofpoint Products.** As between the parties, Proofpoint retains all title, intellectual property and other ownership rights throughout the world in and to the Proofpoint Products, Documentation, any Service offering and the Work Product. Proofpoint

hereby grants to Customer a non-exclusive, non-transferable, fully paid up, perpetual license to use the Work Product in accordance with this Schedule and solely for Customer's internal business purposes. Customer retains all title, intellectual property and other ownership rights in all Customer Data, Customer Confidential Information and all data, text, files, output, programs, information, or other information and material that Customer provides, develops, or makes available or uses in conjunction with any Service offering.

**4.2 Limited Rights.** Customer's rights to use the Proofpoint Products (including the Documentation) shall be limited to those expressly granted in this Schedule and any applicable Product Exhibit. Customer is not authorized to use (and shall not permit any third party to use) the Proofpoint Products (including the Documentation) or any portion thereof except as expressly authorized by this Schedule or the applicable Authorization Form. There are no implied rights and all other rights not expressly granted herein are reserved. No license, right or interest in any Proofpoint trademark, copyright, trade name or service mark is granted hereunder. Customer shall not remove from any full or partial copies made by Customer of the Software, Software Updates and Documentation any copyright or other proprietary notice contained in or on the original, as delivered to Customer. If Customer sells, leases, lends, rents, transfers or otherwise distributes an Appliance to a third party, Customer will ensure that it erases all copies of the Software from such Appliance.

**4.3 Injunctive Relief.** Each party acknowledges that the Proofpoint Products contain valuable trade secrets and proprietary information of Proofpoint, that in the event of any actual or threatened breach of the scope of any of the licenses granted hereunder, such breach shall constitute immediate, irreparable harm to Proofpoint for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach in addition to whatever remedies Proofpoint might have at law or under this Schedule.

## **5. FEES, PAYMENT AND REPORTING**

**5.1 Fees and Payment.** All Fees due for Proofpoint Products under an Authorization Form shall be paid by Customer to Hootsuite in accordance with the terms of the contract between Customer and Hootsuite. Except as otherwise expressly permitted herein, all Fees owed to Proofpoint pursuant to an Authorization Form are non-cancellable and non-refundable for the Term. Failure to make timely payment may result in immediate termination of access to the Proofpoint Products. Upon default by Customer, Proofpoint will have all remedies available at law or in equity.

**5.3 Reporting.** Customer shall audit its actual usage of the subscription based Proofpoint Products based on Mailbox count ("Mailbox Count") and inform Proofpoint by email at [accountsreceivable@proofpoint.com](mailto:accountsreceivable@proofpoint.com) of the Mailbox Count upon the occurrence of the following events: (i) on or before any material increase in the Mailbox Count (where such material increase shall be equal or greater than ten percent (10%) of the then current licensed Mailbox Count) and (ii) on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Mailbox Count for which Customer has paid Subscription Fees ("Base Mailbox Count") by more than five percent (5%), then Customer shall pay Proofpoint for each Mailbox beyond the Base Mailbox Count from the time such Mailbox was activated through the remainder of the Initial Term or Extension Term, as applicable. If such number exceeds the Base Mailbox Count by five percent (5%) or less, then Customer shall pay Proofpoint for each Mailbox beyond the Base Mailbox Count from the reporting date of the Mailbox Count through the remainder of the Initial Term or Extension Term, as applicable.

## **6. SUPPORT AND PROFESSIONAL SERVICES**

**6.1 Support.** Proofpoint shall provide support provided Customer is current in payment of the applicable Fees and any additional fees for platinum or premium support, if applicable. Proofpoint's current support terms are described on Proofpoint's website at <http://www.proofpoint.com/license>. For purposes of clarity, the parties acknowledge and agree that with respect to the Nexgate Services, the requirements for Named Support Contact Training and remote access under the Support Terms are not applicable.

**6.2 Professional Services.** Proofpoint shall provide the Professional Services, if any, specified in one or more SOWs agreed to directly between Customer and Proofpoint. All Professional Services shall be billed as stated in the applicable SOW and Customer agrees that if Customer has not used the Professional Services within one (1) year of paying for such Professional Services, Proofpoint has no further obligations and Customer shall not be entitled to a refund except as set forth expressly in the applicable SOW.

**6.3 Warranty.** Proofpoint warrants it will provide Professional Services in a professional and workmanlike manner consistent with good industry standards and practices. As Customer's sole and exclusive remedy and Proofpoint's entire liability for any breach of the foregoing warranty, Proofpoint will, (i) use reasonable efforts to provide a work around, or otherwise re-perform the Professional Services or, if Proofpoint is unable to do so, (ii) terminate the applicable SOW and refund that portion of any Fees paid to Proofpoint or Reseller that correspond to the allegedly defective Professional Services.

## **7. TERMINATION AND EXPIRATION**

**7.1 Termination for Cause.** Either party may terminate this Schedule or Product Exhibit or (so far as it applies to any Proofpoint Product) any Authorization Form (i) immediately upon written notice if the other party commits a non-remediable material breach; or (ii) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach, unless such breach is for non-payment and then within five (5) days of such notice.

**7.2 Termination without Cause.** Either party may terminate this Schedule and each Product Exhibit immediately by written notice if no Authorization Form is in effect.

**7.3 Effects of Termination.** On termination or expiration of this Schedule, all Software and Service licenses granted under all Authorization Forms shall automatically terminate with immediate effect, provided the license granted pursuant to Section 4.1 for Customer to use the Work Product for Customer's internal business purposes shall remain in full force and effect.

**7.4 Term and Renewal.** Unless otherwise set forth in the applicable Product Exhibit or Authorization Form, the Initial Term shall be as set forth on the applicable Authorization Form. The renewal for any Extension Term shall be in accordance with the renewal terms set forth in Customer's agreement with Hootsuite.

**7.5 Survival.** In the event of the termination or expiration of this Schedule, the provisions of this Schedule which by their nature extend beyond the expiration or termination of this Schedule, including but not limited to sections 2.2, "License Restrictions"; 3, "Confidentiality"; 4, "Ownership"; 5 "Fees, Payment and Reporting"; 7, "Termination and Expiration"; 10, "Limitation of Liability"; and 11, "General Provisions", as well as any accrued rights to payment shall remain in effect beyond such termination or expiration until fulfilled.

## **8. INTELLECTUAL PROPERTY INDEMNITY**

Proofpoint will (i) defend and indemnify Customer against any suit or proceeding by a third party to the extent based on a rightful claim that the applicable Proofpoint Product(s) in the form created and provided by Proofpoint and sold to Customer pursuant to this Schedule (the "Indemnified Product(s)") directly infringes any valid U.S. patent or U.S. copyright, or misappropriates any valid trade secret enforceable under the laws of the United States or a jurisdiction thereof, and (ii) pay any damages finally awarded in such suit or proceeding as a result of such claim (or pay any settlement of such claim), provided that Customer will promptly notify Proofpoint in writing of the third party claim, suit or proceeding (in any event, within thirty (30) days after Customer becomes aware or reasonably should have been aware of such claim); authorizes and allows Proofpoint to have sole control of the defense and/or settlement of the claim; and provides any information, assistance and other cooperation reasonably requested by Proofpoint in connection with the claim, suit or proceeding. In the event of a claim relating to an Indemnified Product, Proofpoint will, at its sole option and expense: (a) procure for Customer the right to use the Indemnified Products under the terms of this Schedule; (b) replace or modify the Indemnified Products to be (or to make it more likely to be) non-infringing; or (c) if the foregoing options are not reasonably practicable, then Proofpoint may terminate Customer's rights to use Indemnified Products and refund all amounts paid by Customer to Proofpoint attributable to Customer's future usage or access to the Indemnified Products hereunder. Proofpoint shall have no liability for, and the aforementioned Proofpoint obligations shall not apply to any claim based on or relating to (1) the use of the Indemnified Products in combination with any other product, service or device, if such infringement claim would have been avoided by the use of the Indemnified Products without such other product, service or device; (2) any modification or adaptation to the Indemnified Products; (3) use of an Indemnified Products other than as expressly authorized pursuant to this Schedule or pursuant to applicable Proofpoint Documentation; (4) use of the Indemnified Products by Customer after Proofpoint has made available to Customer a modified version or replacement for the Indemnified Products or has provided notice to Customer that a claim of infringement has been or may be made with respect to the Indemnified Product; or (5) specifications, instructions, features, functions or designs or other elements provided by or requested by Customer. The foregoing is the sole and exclusive remedy of Customer and the entire liability of Proofpoint with respect to any infringement or claim of infringement of any third party intellectual property right.

## **9. WARRANTIES, REMEDIES AND DISCLAIMERS**

**9.1 Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Schedule; and (ii) it shall comply with all other applicable laws in its performance hereunder.

**9.2 Product Warranties.** Warranties specific to each Proofpoint Product shall be set forth in an applicable Product Exhibit, executed by both parties.

**9.3 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE AND IN EACH PRODUCT EXHIBIT, PROOFPOINT AND PROOFPOINT LICENSORS DISCLAIM ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF THE INTENDED EMAIL BLOCKING OF ANY MAIL MESSAGE, THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE AGREEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER.

## **10. LIMITATION OF LIABILITY**

**10.1 Maximum Liability.** EXCEPT FOR (I) THE PARTIES' INDEMNIFICATION OBLIGATIONS; (II) DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (III) DAMAGES RESULTING FROM EITHER PARTY'S MATERIAL BREACH OF SECTION 3 (CONFIDENTIALITY); (IV) CUSTOMER'S BREACH OF SECTIONS 2 OR 4.1 (LICENSE TERMS), OR (V) CUSTOMER'S PAYMENT OBLIGATIONS, EACH PARTY'S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE APPLICABLE PROOFPOINT PRODUCT SUBSCRIPTION FEES (AS DEFINED).

**10.2 Excluded Liability.** EXCEPT FOR (i) DAMAGES RESULTING FROM EITHER PARTY'S MATERIAL BREACH OF SECTION 3 (CONFIDENTIALITY) OR (ii) CUSTOMER'S BREACH OF SECTIONS 2 OR 4.1 (LICENSE TERMS), IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.3 ESSENTIAL PURPOSE.** THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

## **11. GENERAL**

**11.1 Government End-User Notice.** This Section shall apply only if Customer is a federal government entity. Proofpoint provides the Proofpoint Products, including related technology, for ultimate federal government end use solely in accordance with the

following: Government technical data and software rights related to the Software include only those rights customarily provided to the public as defined in this Schedule. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Schedule.

**11.2 Publicity.** Neither party may issue press releases or otherwise publicize the parties' relationship without the other party's prior written consent, which shall not be unreasonably withheld.

**11.3 Independent Contractors; Relationship with Third Parties.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Schedule.

**11.4 Notices.** All notices shall be in writing to each party's address on the signature page of this Schedule and effective upon receipt.

**11.5 Entire Agreement; Integration.** This Schedule, including the applicable Product Exhibit(s), constitutes the entire agreement of the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No amendment or waiver of any provision of this Schedule shall be effective unless in writing and signed by the party against whom the amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, any Authorization Form issued by Hootsuite shall be deemed a convenient order and payment device only and, except as expressly set out in this Schedule or the applicable Product Exhibit, no terms stated in any Authorization Form or in any other order document shall be incorporated into this Schedule, and all such terms shall be void and of no effect. Notwithstanding any language to the contrary therein, no terms stated in any order form or in any other order document issued by Customer shall be incorporated into this Schedule, and all such terms shall be void and of no effect.

**11.6 Waiver.** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Schedule is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect. The parties' rights and remedies under this Schedule are cumulative.

**11.7 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

**11.8 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Schedule in its entirety (including all Product Exhibits hereunder), without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party.

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

**11.10 Applicable Law.** This Schedule will be governed by the laws of the State of California and the United States of America, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara, County, California, for resolution of any disputes arising out of this Schedule.

**11.11 Counterparts.** Any subsequent Product Exhibit incorporated into this Schedule may be executed by facsimile and in counterparts.

**11.12 Headings; Language.** All headings used herein are for convenience of reference only and will not in any way affect the interpretation hereof. The English language version of this Schedule controls. It is the express wish of both parties that this Schedule, and any associated documentation, be written and signed in English.

## NEXGATE SERVICES EXHIBIT

This Nexgate Services Exhibit is an exhibit to the Proofpoint Products Schedule (the "Schedule"). The Schedule is an integral part of this Nexgate Services Exhibit and is incorporated by reference.

### 1. Additional Definitions. In this Exhibit:

"Customer Data" means the data uploaded by Customer to Proofpoint via the applicable Nexgate Service and stored on Proofpoint's servers.

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

"Nexgate Service(s)" means the applicable Proofpoint Nexgate service(s) set forth in Proofpoint Nexgate Services Description attached hereto as Attachment A.

"Users" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals who are authorized by Customer to use the Nexgate Service.

"Scans" means scans of the social web via the Proofpoint SocialDiscover and SocialPatrol modules.

**2. TERMS OF NEXGATE SERVICE.** Proofpoint shall make the Nexgate Service available to Customer and its Affiliates in accordance with this Schedule, Authorization Form, this Nexgate Services Exhibit and the Nexgate Service Description. For the purposes of this Nexgate Services Exhibit, the definition of Mailbox in the Schedule shall not apply and any other reference to "Mailbox" in the Schedule shall be deleted and replaced with, as applicable: (i) "User" and (ii) "Scans". Customer's right to use the Nexgate Service is limited to, as applicable: (i) the maximum number of Users for each module specified in each Authorization Form and (ii) the maximum number of Scans for each module specified in each Authorization 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 the Nexgate Service and ensuring that the Customer Equipment and any ancillary services are compatible with the Nexgate Service and comply with all configuration requirements set forth in the Nexgate Service Description; 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 Users and service providers (if applicable) in managing its electronic messaging system. Customer is responsible for providing accurate, current and complete contact information, including Customer's legal business name, physical address, email address and phone number and for updating this information promptly in the event of any change. As part of the registration process, Customer will identify an administrative user name and password for Customer's Nexgate Service account. Customer may use the administrative user name and password to create standard users (each with a user password). Customer is responsible for maintaining the security of its user names and passwords at the user level and for promptly changing or deleting any user name or password that Customer believes may have been compromised. Proofpoint reserves the right to institute password requirements (such as the length of password or the required use of numbers, symbols etc.) and to refuse registration of, or cancel passwords it deems inappropriate.

**4. INDEMNIFICATION BY CUSTOMER.** Customer shall defend, indemnify and hold Proofpoint harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims made or brought against Proofpoint by a third party alleging that the Customer Data, or Customer's use of the Nexgate Service in violation of this Exhibit, infringes the intellectual property rights of, or has otherwise harmed, such third party; provided, that Proofpoint (a) promptly gives written notice of the claim to Customer; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle any claim unless it unconditionally releases Proofpoint of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

**5. THIRD PARTY SERVICES.** The Nexgate Service may allow Customer to interface with a variety of third party software or services obtained separately by Customer (e.g., Facebook, Twitter, LinkedIn). No endorsement of any such service should be inferred as a result of any integration with the Nexgate Service and Proofpoint is not responsible for the data, operation or functionality of such third party services. While Proofpoint may, in its sole discretion, customize the Nexgate Service to interoperate with various third party services: (i) Customer is responsible for complying with the terms and policies of each such third party service including, without limitation, any payment obligations related thereto; and (ii) Proofpoint cannot guarantee that such third party services will continue to interoperate with the Service.

**6. SECURITY.** Proofpoint maintains commercially reasonable safeguards to protect the security and integrity of Customer Data. Such safeguards include commercially reasonable (a) backup and recovery procedures, (b) firewalls and access controls designed to prevent unauthorized access to the Services, and (c) using a SAS 70 Type II certified (or equivalent) data center.

### 7. WARRANTIES.

**7.1 Warranties.** Proofpoint warrants that the Nexgate Service will substantially conform in all material respects in accordance with the Nexgate Service Description. Customer will provide prompt written notice of any non-conformity. Proofpoint may modify the Nexgate Service Description in its sole discretion, provided the functionality of the Nexgate 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 (i) use reasonable efforts to fix, provide a work around, or otherwise repair or replace the Nexgate Service or, if Proofpoint is unable to do so, (ii) terminate this Nexgate Services Exhibit and return the Subscription Fees paid to Proofpoint or Reseller for such allegedly defective Nexgate Service for the period commencing from Customer's notice of nonconformity through the remainder of the Initial Term or Extension Term, as applicable.

**7.2 Service Levels.** Proofpoint warrants that the Nexgate Service will meet the requirements set forth in the Nexgate Service Level Agreement ("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.

**7.3 Disclaimer.** PROOFPOINT DOES NOT WARRANT THAT THE NEXGATE SERVICE WILL PROTECT AGAINST ALL POSSIBLE THREATS OR ATTACKS; NOR DOES IT MAKE ANY WARRANTY AS TO THE DATA OR RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. CUSTOMER ACKNOWLEDGES THAT PROOFPOINT ANALYZES DATA THAT IS MADE AVAILABLE PUBLICLY THROUGH THE INTERNET AND THAT PROOFPOINT MAKES NO REPRESENTATIONS WITH RESPECT THERETO.

**8. TERMINATION.** Upon the effective date of termination of this Nexgate Services Exhibit or the Schedule, Customer's license to use the Nexgate Service will cease.

## **ATTACHMENT A**

### **NEXGATE SOCIAL MEDIA SECURITY & COMPLIANCE SUITE SERVICES DESCRIPTION**

#### **Overview**

Nexgate is a hosted application that delivers brand protection and compliance for enterprise social media accounts. Its technology integrates with the leading social networking platforms and applications such as Facebook, Twitter, Google+, LinkedIn, YouTube, Pinterest, Instagram, Salesforce Chatter, and others to enable Customer to find and audit brand affiliated accounts, pages, and profiles, manage access and connected applications, filter abusive or offensive content, enforce compliance standards and rules, archive communications, and stop fraud and account hacking.

#### **Nexgate SocialDiscover™ social media brand account search**

Nexgate SocialDiscover automates social account search across the leading social networks to find social media pages, profiles or accounts affiliated with Customer's brand, whether created by an employee, partner, customer, or competitor, categorize each account for analysis and reporting, and persistently monitor the social networks for any new or fraudulent accounts.

##### **Social Account Search**

SocialDiscover scans the social web to find accounts affiliated with Customer's brand. Customer can determine the number of branded accounts in each social network, and persistently scan for any new accounts to maintain an up-to-date inventory.

##### **Automatic Alerts**

SocialDiscover provides automated alerts when a new branded account is detected. Using API integration with the social networks, SocialDiscover tool continuously scans for any new accounts based on Customer's saved search parameters, and notifies Customer in the event new accounts matching those search parameters are detected.

##### **On Demand Account Content Scan**

SocialDiscover provides the ability to scan the public facing content on selected social accounts to determine potential security or compliance risks. Once selected the account will have its content scanned against 100s of content and application categories. On demand scan results appear in a dashboard and summarized at an account level or across groups of accounts with exportable reports. Recurring and automatic scans can also be set for a key accounts that require ongoing monitoring.

#### **Nexgate SocialPatrol™ social media account protection and policy enforcement**

Nexgate SocialPatrol provides advanced protection for branded social media accounts across all major social networks, including Facebook, LinkedIn, Google+, and Pinterest.

SocialPatrol enables Customer to lock its social media accounts, stop hackers from defacing its brand, remove malicious or inappropriate content, control connected applications, prevent unauthorized publishing, and address compliance requirements.

##### **Account Hacking & Tampering Detection with ProfileLock**

SocialPatrol includes ProfileLock, which provides real-time monitoring and remediation for account tampering, hacks, and abuse. ProfileLock integrates via API with all leading social networks, and continuously monitors modifications to Customer social media profiles. If any change occurs, ProfileLock automatically alerts Customer and removes any unauthorized content after a pre-specified period of time.

##### **Automated Social Media Content Moderation**

SocialPatrol automates content and security moderation. Pre-configured policy templates come embedded within SocialPatrol for content security, compliance and acceptable use. Customer can set standardized policy across a wide range of industries, including financial services, healthcare, pharmaceutical, retail and more, with no rule-writing required. SocialPatrol includes over 110 classifiers working in unification with NLP.

##### **Social Application Controls**

SocialPatrol enables Customer to control the applications that are allowed to publish content on a specific social account or set of accounts. This includes over 2,000 application types across over 8 categories of apps. Customer can use built-in policy templates for application rules as well as using the base categorization to collect the list of applications publishing on their accounts and, then, create a white list of approved applications that are authorized to publish on Customer accounts.

##### **Risk and Compliance Management**

SocialPatrol provides click-and-comply policy controls and reporting to enable Customer to ensure compliance with industry regulations and corporate governance.

SocialPatrol includes pre-built policies and reports.

#### **Nexgate SocialSyndicate™ social media content review**

SocialSyndicate provides a web-based portal to submit content for automated content scanning, workflow routing, and sharing with content libraries prior to publishing on social media channels. SocialSyndicate enables distribution of submission profiles via links to enable content submission and collection from multiple employee demographics and social contributors. SocialSyndicate is directly integrated with Salesforce Marketing Cloud Social Studio and includes built-in integration capabilities for social publishing tools and content libraries.



### **Nexgate Password Lockbox social account password manager**

Nexgate Password Lockbox allows the admin passwords for social accounts to be protected and hidden from users of a social account or social tool while still allowing users to access the accounts via a centrally managed portal with optional two-factor authentication enforced. This allows the removal of password sharing over email or spreadsheets as well as non-disruptive change-control of passwords for social accounts or tools.