

MASTER SUBSCRIPTION AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING "AGREE" CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER'S BEHALF.

This agreement is between Proactive Discovery, LLC., a Colorado Company (**Proactive Discovery**), and the customer agreeing to these terms (**Customer**).

1. SOFTWARE SERVICE.

This agreement provides Customer access to and usage of an Internet-based software service through the purchase of a subscription as specified on an order (**Service**).

2. USE OF SERVICE.

- a. **Customer Owned Data.** All data uploaded by Customer to the Service remains the property of Customer, as between Proactive Discovery and Customer (**Customer Data**). Customer grants Proactive Discovery the right to use the Customer Data solely for purposes of performing under this agreement.
- b. **Access and Usage.** Customer may allow its employees and contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its employees and contractors.
- c. **Usage Limits.** Each subscription purchased specifies one specific Node or Endpoint and enables unlimited scans of that specific Node or Endpoint. **Node** or **Endpoint** means a network endpoint, such as a workstation, laptop or server. For clarity, virtual servers, virtual desktops and other logically distinct Internet Protocol (IP) addressable endpoints are also Endpoints/Nodes.
- d. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Proactive Discovery promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.
- e. **Proactive Discovery Support.** Proactive Discovery will provide customer support for the Service under the terms of this agreement.
- f. **Purchase Order.** Means a document agreed to in writing and executed among Customer and Proactive Discovery that references a Quote covering Customer's subscription to the specified Service offering.
- g. **14-Day Trial Version.** If Customer has registered for a trial use of the Service, Customer may access the Service for a 14-day time period (unless extended by Proactive Discovery in writing). The Service is provided AS IS, with no warranty during this time period.

3. SERVICE LEVEL AGREEMENT & WARRANTY.

- a. **Warranty.** Proactive Discovery warrants to Customer: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service in any given month (excluding maintenance outages, outages beyond Proactive Discovery's reasonable control, and outages that result from any Customer technology issues); (ii) the functionality or features of the Service

may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

- b. **LIMITED REMEDY. CUSTOMER'S EXCLUSIVE REMEDY AND PROACTIVE DISCOVERY'S SOLE OBLIGATION FOR ITS FAILURE TO MEET THE WARRANTY IN SECTION (A)(I) ABOVE WILL BE FOR PROACTIVE DISCOVERY TO PROVIDE A CREDIT FOR THE APPLICABLE MONTH (IF THIS AGREEMENT IS NOT RENEWED, THEN A REFUND FOR THE MONTH), PROVIDED THAT CUSTOMER NOTIFIES PROACTIVE DISCOVERY OF SUCH BREACH WITHIN 30 DAYS OF THE END OF THAT MONTH.**
- c. **WARRANTY DISCLAIMER. PROACTIVE DISCOVERY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE PROACTIVE DISCOVERY TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, PROACTIVE DISCOVERY DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED.**
- d. **ADDITIONAL DISCLAIMER. CUSTOMER UNDERSTANDS AND AGREES THAT (I) ITS USE OF THE SERVICE MAY REVEAL MALWARE IN CUSTOMER'S NETWORK AND MAY RECOVER AND RETAIN A COPY IN AN INERT STATE FOR EVIDENCE RETENTION; (II) ITS REMOVAL OR TRANSFER OF MALWARE MAY INTRODUCE ADDITIONAL RISKS TO CUSTOMER'S NETWORK; AND (III) PROACTIVE DISCOVERY HAS NO RESPONSIBILITY OR LIABILITY FOR THE POSSESSION, HANDLING OR USE OF MALWARE IDENTIFIED BY OR EXPORTED FROM THE SERVICE; (IV) ITS USE OF THE SERVICE DOES NOT GUARANTEE CLIENT'S COMPLETE AND FULL PROTECTION OF ITS ENROLLED DEVICES, AND THAT A CYBER INCIDENT REMAINS A POSSIBILITY DURING THE SUBSCRIPTION PERIOD.**

4. PAYMENT.

- a. **Monthly Payments.** Customer must pay all fees as specified on the order. Customer must pay the monthly subscription fee via the automated payment service provider chosen by Proactive Discovery. Paper checks cannot be accepted for monthly subscription services. All payments must be received no later than the 3rd business day of each month for the term of the Service. Customer is responsible for the payment of all sales, use, withholding, VAT, and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement. Proactive Discovery may charge interest on overdue amounts at the lesser of 1.5% or the highest rate permitted under applicable law.
- b. **Subscription Increase.** Subject to availability, if Customer's usage of the Service exceeds the usage purchased under an Existing Purchase Order (a "**True-Up**"), Proactive Discovery has the right to invoice Customer for the incremental fees associated with such True-Up on (i) a pro rata service basis in the Existing Purchase Order for the remaining period of such subscription term and/or (ii) the overages for usage for the relevant period at service rate specified in the existing Purchase Order. No refunds or credits for paid fees will be issued to Customer. "**Existing Purchase Order**" means the Purchase Order for the current Subscription Term.

5. MUTUAL CONFIDENTIALITY.

- a. **Definition of Confidential Information.** Confidential Information *means* all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Proactive Discovery's Confidential Information includes, without limitation, the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below). Customer's Confidential Information includes,

without limitation, the Customer Data.

- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

d. Data Security Measures.

- i. *Security Measures.* In order to protect Customer's Confidential Information, on its own infrastructure, Proactive Discovery (i) implements and maintains all reasonable security measures appropriate to the nature of the Confidential Information including, without limitation, technical, physical, administrative, and organizational controls, and will maintain the confidentiality, security, and integrity of such Confidential Information; (ii) implements and maintains industry standard systems and procedures for detecting, preventing, and responding to attacks, intrusions, or other systems failures and regularly tests, or otherwise monitors the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designates an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).
- ii. *Notice of Data Breach.* If Proactive Discovery discovers that Customer Confidential Information has been accessed, disclosed, or acquired, on its own infrastructure, without proper authorization and contrary to the terms of this agreement, Proactive Discovery will promptly alert Customer of any such data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Proactive Discovery will give highest priority to immediately correcting any data breach, and will devote such resources as may be required to accomplish that goal. Proactive Discovery will provide Customer with all information reasonably necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted, Customer may provide notice to any or all parties affected by any data breach. In such case, Proactive Discovery will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Proactive Discovery will provide Customer with information about what Proactive Discovery has done or plans to do to minimize any harmful effect of the unauthorized use or disclosure of, or access to, Confidential Information.

6. PROACTIVE DISCOVERY PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, Software and Documentation, and other technologies provided by Proactive Discovery as part of the Service are the proprietary property of Proactive Discovery and its licensors, and all right, title, and interest in and to such items, including all associated intellectual property rights, remain only with Proactive Discovery or its licensors. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation.

Proactive Discovery reserves all rights unless expressly granted in this agreement.

- b. **Restrictions.** Customer *may not* (i) sell, resell, rent, or lease the Service or use it in a service-provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; or (vi) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function, or graphic for competitive purposes.
- c. **Software and Documentation.** All software provided by Proactive Discovery as part of the Service, and the Service documentation, sample data, marketing materials, training materials, and other materials provided through the Service or by Proactive Discovery (**Software and Documentation**) are licensed to Customer as follows: Proactive Discovery grants Customer a non-exclusive, non-transferable license during the term of this agreement to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **Aggregated Data.** During and after the term of this agreement, Proactive Discovery may use and owns all anonymized results and data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support, and other business purposes.

7. TERM AND TERMINATION.

- a. **Term of this Agreement.** This agreement continues until all orders have expired or are terminated for material breach under **Section 7(b)**.
- b. **Subscription Term.** The term of the subscription is as specified in the order. Subscriptions automatically renew for additional periods equal in length to the then current subscription term or one year, whichever is shorter, unless either party gives the other party notice of non-renewal at least 30 days prior to the end of the then current subscription term.
- c. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- d. **Return Proactive Discovery Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Proactive Discovery for any unpaid amounts and destroy or return all property of Proactive Discovery. Upon Proactive Discovery's request, Customer will confirm in writing its compliance with this destruction or return requirement.
- e. **Suspension for Violations of Law.** Proactive Discovery may temporarily suspend the Service and/or remove the applicable Customer Data if it in good faith believes that, as part of using the Service, Customer has violated a law. Proactive Discovery will attempt to contact Customer in advance.
- f. **Suspension for Non-Payment.** Proactive Discovery may temporarily suspend the Service if Customer is more than 10 days late on any payment due pursuant to an order.

8. LIABILITY LIMIT.

- a. **Exclusion of Indirect Damages.** Proactive Discovery is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility or foreseeability of such damage or loss.
- b. **Total Limit on Liability.** Except for Proactive Discovery's indemnity obligations, Proactive Discovery's total liability arising out of or related to this agreement (whether

in contract, tort, or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.

9. INDEMNITY.

- a. **Defense of Third-Party Claims.** Proactive Discovery will defend or settle any third-party claim against Customer to the extent that such claim alleges that the technology used by Proactive Discovery to provide the Service violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Proactive Discovery of the claim in writing, cooperates with Proactive Discovery in the defense, and allows Proactive Discovery to solely control the defense or settlement of the claim.
- *Costs.* Proactive Discovery will pay infringement claim defense costs it incurs in defending Customer, and Proactive Discovery negotiated settlement amounts, and court-awarded damages.
 - *Process.* If such a claim appears likely, then Proactive Discovery may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Proactive Discovery determines that none of these are reasonably available, then Proactive Discovery may terminate the Service and refund any prepaid and unused fees.
 - *Intellectual property claim exclusions.* THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND PROACTIVE DISCOVERY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS. Proactive Discovery has no obligation for any claim arising from: Proactive Discovery's compliance with Customer's specifications; a combination of the Service with other technology where the infringement would not occur but for the combination; use of Customer Data; or technology not provided by Proactive Discovery.
- b. **By Customer.** If a third party claims against Proactive Discovery that any part of the Customer Data violates a law or infringes that party's patent, copyright, or other right, Customer will defend Proactive Discovery against that claim at Customer's expense and pay all costs, damages, and attorneys' fees that a court finally awards or that are included in a settlement approved by Customer, provided that Proactive Discovery promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim.

10. GOVERNING LAW AND FORUM.

- a. **This agreement is governed by the laws of Colorado, without regard to conflict of laws principles. Any dispute between Customer and Proactive Discovery arising out of or related to this agreement must be exclusively determined by binding arbitration in Arapahoe County, Colorado under the then current international rules of the American Arbitration Association. Nothing in this agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.**

11. OTHER TERMS.

- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Proactive Discovery. No waiver is effective unless the party waiving the right signs a waiver in writing.

- b. **Compliance Audit.** Proactive Discovery (or its representative) will continuously monitor and audit Customer's usage of the Service Software at any Customer facility or customer devices. Customer will cooperate with such audit. Customer agrees to pay within 10 days of written notification any fees applicable to Customer's use of the Service and Software in excess of the license.
- c. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger or sale of substantially all the assets of a party.
- d. **Independent Contractors.** The parties are independent contractors with respect to each other.
- e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.
- f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach of this agreement.
- g. **No Additional Terms.** Proactive Discovery rejects additional or conflicting terms of any Customer form- purchasing document.
- h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i. **Survival of Terms.** Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- j. **Export Compliance.** Customer must comply with all applicable export control laws of the United States, foreign jurisdictions, and other applicable laws and regulations.
- k. **Third Party Software Licenses.** The Software may contain embedded third party software components, which are provided as part of the Software and for which additional terms may be included, if required, in the Documentation.
- l. **U.S. Government Restricted Rights.** If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1), and DFAR §252.227-7014(a)(5), or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software," or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.
- m. **Feedback.** If Customer provides feedback or suggestions about the Service, then Proactive Discovery (and those it allows to use its technology) may use such information without obligation to Customer.