WEBROOT®

FlowScape Subscription Agreement

Customer may acquire and use the Service only pursuant to the terms of a Quote, this Agreement, and any Attachment to this Agreement (the "**Subscription Documents**"). The Subscription Documents may also include a Subscription Entitlement Certificate provided to Customer or its authorized agents (the "**Certificate**"). The Subscription Documents constitute the complete agreement between Customer and Webroot regarding how Customer may obtain and use the Service. All defined terms in this Agreement have the meanings given to them in Section 24 or in the section in which such terms are first defined.

If an individual is downloading, installing, or configuring the Enabling Software or Service on behalf of Customer, whether in such individual's capacity as an employee, independent contractor, or outsourced agent, such individual represents and warrants that he or she is at least 18 years old and has the full right, power, and authority to enter into this Agreement on behalf of Customer, that this Agreement has been duly authorized by Customer, and that this Agreement will constitute the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms.

1. **Orders; Acceptance; Entire Agreement; Modifications.** Customer may select the Service via a Quote provided by Webroot or a Reseller. Following receipt of a Quote, Customer may submit a purchase order to Webroot or a Reseller that contains a description of the type of Service and any other applicable terms, such as subscription period and quantity; except that any click-wrap, click-through, or browse-wrap terms on or referenced in any such purchase order will have no effect against Webroot. If the terms set forth in any purchase order submitted by or on behalf of Customer are inconsistent with one or more of the terms of the Subscription Documents, the terms of the Subscription Documents will prevail. Customer's download or installation of any Enabling Software, use of the Service, or payment of any invoice for the Service, whatever comes first, constitutes Customer's acceptance of the terms of the Subscription Documents, and the Subscription Documents supersede any prior discussions or representations regarding the Service, whether oral or written. Webroot may modify this Agreement and any linked or referenced documents contained in this Agreement following notice to Customer, which may be provided to the email address Webroot has on file for Customer or via in-product messaging. By agreeing to the modified Agreement or using the Service after receiving notice of the modified Agreement, Customer agrees to all of the modifications.

2. **The Service.** The Service is a subscription-based offering, whereby Enabling Software may be installed on one or more Customer networks in order to provide the Service. The Service is described in one or more Quotes provided to Customer. If Webroot is to provide Customer with any technical support or professional services other than its standard support and services, such support and services must be described in the Quote. If Webroot does provide technical support or professional services, Customer must: (A) cooperate in all matters relating to the support or services and provide access to Customer's premises as required by Webroot; (B) secure all approvals and authorizations necessary for the support or services; (C) promptly respond to any request to provide information or decisions that are reasonably necessary for providing support or the services; and (D) provide access to Customer's infrastructure and technology and information as reasonably requested. Professional services, if any, are provided pursuant to the Webroot Professional Services Agreement available at https://www.webroot.com/us/en/company/about/service-terms-and-conditions/. If professional services are provided, the Professional Services Agreement is incorporated into the Subscription Documents. In addition to the Customer responsibilities set forth in a Quote, if any, Customer must provide all hardware (except as set forth in Section 3), software, databases, bandwidth, and connectivity to enable Customer's use of the Service. Customer is responsible for the use of the Service by any user who accesses the Service while using Customer's credentials and Customer releases Webroot from any damages suffered by Customer relating to the foregoing. Customer must immediately notify Webroot if it becomes aware of any unauthorized use of its credentials, or any other breach of security relating to its account

3. **Equipment; Limited Warranty**. If Webroot provides Equipment to Customer in connection with the Service, the terms of this Section 3 will apply.

    3.1. Any price for the Equipment will be as set forth in the applicable Quote. Unless otherwise set forth in the Quote, delivery will be FOB Webroot's facility. Shipping and insurance charges will be as set forth in the Quote.

    3.2. Unless otherwise set forth in the Quote, title to the Equipment will remain with Webroot, and Customer must return the Equipment to Webroot following the expiration of the Subscription Term or the earlier termination of the Subscription Documents.

    3.3. Webroot warrants to Customer that the Equipment, as delivered, will be free from defects in materials and workmanship for a period of one year from the date such Equipment is delivered to Customer ("**Equipment Warranty Period**"), when used solely to access the Service in accordance with Section 4. Webroot's sole liability and Customer's exclusive remedy for Equipment that fails to conform to this limited warranty ("**Nonconforming Equipment**") is limited to repair or replacement of such Nonconforming Equipment, at Webroot's sole option. Return of Nonconforming Equipment must be made only

according to Webroot's then-current return and return material authorization policies or practices. Webroot will pay for Webroot-required shipping and insurance for Nonconforming Equipment, subject to Customer's compliance with such policies or practices. The warranty for the repaired or replaced Equipment is limited to the remaining duration of the original limited warranty for the Nonconforming Equipment. This limited warranty does not apply to any Equipment that is subjected to unusual physical or electrical stress, misuse, neglect, improper testing or storage, or repair by any party other than Webroot. The above warranty is for Customer's benefit only, and is non-transferable.

3.4. In the event a warranty claim relating to the Service is made under Section 13 after the expiration of the Equipment Warranty Period, and the non-conformity is a result of a failure of the Equipment, then, as Webroot's sole obligation in relation thereto, Webroot will use commercially reasonable efforts to assist Customer to acquire replacement Equipment at Customer's expense. Webroot does not make any warranty as to the continued availability of replacement equipment.

3.5. The Equipment may contain Third Party Software or Open Source Software that is not part of the Service or Enabling Software, but is required for the operation of the Equipment. Customer, and not Webroot, is responsible for obtaining and complying with any third party licenses for such Third Party Software or Open Source Software.

4. **Non-Exclusive Rights.**

4.1. **License.** For so long as Customer complies with Sections 5 and 10, Webroot hereby grants to Customer during the Subscription Term a non-exclusive, non-sublicensable, non-transferable, personal license to: (A) download, install, configure, and use the applicable Enabling Software for the sole purpose of accessing and using the Service in accordance with the Subscription Documents; and (B) use and make a reasonable number of copies of the Documentation (if any is provided) as necessary to use the Service. For the avoidance of doubt, Webroot does not grant Customer a right to modify, publicly display, publish, or distribute the Documentation.

4.2. **Right to Access Services.** For so long as Customer complies with Sections 5 and 10, Webroot will use commercially reasonable efforts to make the Service available to Customer solely for Customer's internal business purposes in accordance with the Subscription Documents and not for resale or to provide services to or on behalf of third parties.

4.3. **MSP.** If Customer provides Managed Services as an MSP, the rights set forth in Attachment 1 apply to Customer's use of the Service.

5. **License Conditions.** Customer may use the Service only during the Subscription Term in accordance with Subscription Documents and the Documentation. As a condition to the rights granted in Section 4, Customer must not, nor permit any third party to, (A) access or use the Service in a manner not permitted by the Subscription Documents; (B) circumvent any restrictions or mechanisms intended to limit use of the Service to a particular authorization, entitlement or subscription; (C) modify or prepare derivative works of or improvements to any portion of the Enabling Software or Service; (D) except for rights granted to MSPs under Attachment 1, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any portion of the Service to any third party, including in connection with any hosting, time-sharing, service bureau, software as a service, cloud, or other technology or service; (E) reverse engineer, disassemble, or decompile any feature or portion of the Enabling Software or Service, except to the extent permitted by law; (F) alter or remove any copyright, trademark, or proprietary notices, credits, or legends provided through the Enabling Software, the Service, or the Documentation; (G) use the Service in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person or entity; or (H) use the Enabling Software or Service in violation of any applicable law, regulation, or order, or in violation of any person's or entity's rights. If Webroot receives a complaint or notice of violation of any third party rights, Webroot may suspend or, if necessary, terminate Customer's access to and use of the Enabling Software and Service. If Customer is an MSP, the conditions set forth in Attachment 1 also apply to Customer's use of the Enabling Software and Service.

6. **Evaluation Versions**. Customer's use of the Evaluation Services is governed by this Agreement as modified by this Section 6. If Webroot chooses to provide Evaluation Services to Customer, Customer may access and use such Evaluation Services only in a non-production, testing-only environment during the Evaluation Period for purposes of internally testing and evaluating the Enabling Software and the Service to determine whether to pay for a license and right to the Services. When the Evaluation Period expires, Customer's right to access and use the Evaluation Service expires and Webroot may disrupt or disable Customer's authentication credentials. If Customer desires to use the Service after the Evaluation Period, Customer must acquire a license. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR THE SELECTION AND USE OF THE EVALUATION SERVICES. THE EVALUATION SERVICES MAY NOT BE COMPLETE OR FULLY FUNCTIONAL, AND WEBROOT HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH REGARD TO THE EVALUATION SERVICES AND ANY PROFESSIONAL SERVICES RELATED TO THE EVALUATION SERVICES, EACH OF WHICH IS MADE AVAILABLE TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. Webroot does not guarantee that it will continue to make the Evaluation Services available under this Agreement or at all.

7. **Information Collected by the Enabling Software or Service**. Webroot will comply with its FlowScape Privacy Statement, which is available at https://www.webroot.com/us/en/legal/privacy. Webroot may update the FlowScape Privacy Statement pursuant to the terms set forth in such statement or by publishing the revised terms on its website and providing an email to Customer regarding such publication.

8. **Confidential Information.** As a condition of being provided with Confidential Information, Recipient must: (A) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (B) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care Recipient uses to protect its own Confidential Information and in no event with less than a reasonable degree of care; and (C) promptly notify Discloser in writing of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure. Recipient may disclose Confidential Information as required to comply with the binding orders of courts or governmental entities that have jurisdiction over it, except that Recipient must: (X) give Discloser reasonable written notice prior to any such disclosure in order to allow Discloser to seek a protective order or other appropriate remedy; (Y) disclose only such Confidential Information as is required by the court or governmental entity; and (Z) use commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.

9. **Ownership.** As between Customer and Webroot, Webroot is and will remain the sole and exclusive owner of all right, title, and interest in and to the Webroot Property, including all Intellectual Property Rights therein, subject only to the limited rights expressly granted to Customer under this Agreement. Customer hereby unconditionally and irrevocably assigns to Webroot Customer's entire right, title, and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to the Webroot Property (including any rights in derivative works or patent improvements), whether held or acquired by operation of law, contract, assignment, or otherwise. If Customer provides any suggestions or feedback to Webroot regarding any of the Webroot Property, Customer hereby assigns all of its right, title, and interest in and to such suggestions or feedback without compensation by Webroot. Webroot reserves all rights not expressly granted to Customer in this Agreement.

10. **Fees and Payment.**

    10.1. **Fees.** Customer is responsible for paying Webroot or a Reseller, as applicable, the Fees without setoff or deduction. Unless otherwise stated in writing, Webroot or a Reseller, as applicable, will invoice Customer in advance for the Fees for the Subscription Term. All Fees are guaranteed and non-refundable. If Customer's subscription to the Service renews, Webroot or a Reseller, as applicable, will, prior to the end of the then-current Subscription Term, invoice Customer the Fees for the renewal Subscription Term. Webroot reserves the right to increase the Fees in its discretion prior to any renewal Subscription Term. Webroot will invoice monthly in arrears for any time and materials charges that are set forth in a Quote.

    10.2. **Payment.** If Customer purchased its subscription from Webroot, then Customer must pay Webroot the Fees within 30 days of the date after Webroot's invoice.

    10.3. **Records.** Upon Webroot's reasonable request, Customer must allow Webroot and/or its agents or representatives to review Customer's relevant records and logs to ensure Customer's compliance with the terms of this Agreement.

    10.4. **Taxes.** The Fees exclude any taxes. Customer is responsible for payment of all taxes applicable to the Enabling Software and Service, including without limitation all federal, state, and local sales, use, excise, and value-added taxes, with the exception of those taxes based solely on Webroot's net income. Customer will make all payments of Fees to Webroot free and clear of, and without reduction for, any withholding taxes. Customer must reimburse Webroot for any interest or penalties assessed on Webroot as a result of Customer's failure to pay taxes in accordance with this Section 10.4.

    10.5. **Interest.** All late payments will bear interest at the rate of 1.5% per month (or the maximum amount allowed by law, if less), calculated daily and compounded monthly. Customer must reimburse Webroot for all of its fees and costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs.

11. **Term**. This Agreement begins on the Effective Date and continues for the Subscription Term.

    11.1. **No Renewal.** If a Quote or Certificate does not provide for automatic renewals, then Customer's subscription to the Service will expire at the end of the Subscription Term and all rights, licenses, and authorizations granted to Customer under this Agreement will terminate.

    11.2. **Automatic Renewals.** If a Quote or Certificate states that Customer's subscription is subject to automatic renewals, then upon expiration of the initial Subscription Term, the subscription will automatically renew for the specified renewal Subscription Term at Webroot's then-current pricing, in accordance with the terms and conditions pertaining

to automatic renewals presented to Customer at the time it received such Quote or Certificate. Customer may elect not to renew its subscription pursuant to the terms of such Quote/Certificate, or, if such Quote/Certificate is silent on the matter, by providing Webroot notice of Customer's intent not to renew at least 30 days prior to the next renewal Subscription Term. All renewals are subject to payment of the applicable Fees.

12. **Termination**.

   12.1. **Termination for Cause.** Webroot may terminate this Agreement and deactivate Customer's access to the Service immediately if: (A) Customer materially breaches any term of the Subscription Documents; or (B) any aspect of this Agreement is limited by law or third-party terms of service. Customer's failure to pay Fees when due constitutes a material breach of this Agreement.

   12.2. **Effect of Expiration or Termination.** On the expiration or earlier termination of this Agreement, all rights, licenses, and authorizations granted to Customer will immediately terminate and Customer must immediately: (A) stop using the Service; (B) permanently erase (or at Webroot's option return) all of Webroot's Confidential Information from Customer's networks and systems; and (C) return the Enabling Software to Webroot, or, at Webroot's option, provide access to Customer's equipment and premises for Webroot to remove such Enabling Software. In addition, all Fees that Customer owes Webroot at termination, if any, will become due and payable to Webroot on the effective date of termination.

   12.3. **Survival.** This <u>Section 12</u> and <u>Sections</u> <u>5</u>, <u>7-10</u>, <u>14-17</u>, and <u>19-24</u> will survive expiration or termination of this Agreement for any reason.

13. **Limited Warranty and Disclaimer of Warranties**.

   13.1. **Limited Service Warranty**. During the Warranty Period, Webroot warrants that the Service, when used as permitted in this Agreement, will operate substantially as described in the Documentation. Webroot's sole liability (and Customer's exclusive remedy) for any breach of this warranty will be, in Webroot's sole discretion, to use commercially reasonable efforts: (A) to provide Customer with an error-correction or work-around that corrects the reported non-conformity; (B) to replace the non-conforming features of the Service with conforming features; or (C) if Webroot determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund the Fees paid for the Service that are attributable to the period of non-conformance. Webroot will have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. The above warranty will not apply: (U) to any non-conformity caused in whole or in part by failure of Equipment, which will instead be governed by <u>Section 3</u>; (V) in any way to Third Party Software, Open Source Software, or GeoIP Databases; (W) if the Service or Enabling Software are not used in compliance with the terms of the Documentation or Subscription Documents; (X) if any modifications are made to the Enabling Software or Service by Customer or any third party, unless expressly permitted in the Documentation; (Y) to defects due to accident, abuse, or improper use of the Service or Enabling Software; or (Z) to Evaluation Services. FOR THE AVOIDANCE OF DOUBT, THE FOREGOING WARRANTY DOES NOT APPLY TO THIRD PARTY SOFTWARE, OPEN SOURCE SOFTWARE, OR GEOIP DATABASES, WHICH ARE PROVIDED "AS IS".

   13.2. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN <u>SECTION 13.1</u>, THE SERVICE, EQUIPMENT, ENABLING SOFTWARE, DOCUMENTATION, AND ANY PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND WEBROOT AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. IN ADDITION, THE ALGORITHMS AND MACHINE LEARNING UNDERLYING AND CONSTITUTING THE BASIS FOR THE SERVICE ARE FREQUENTLY BEING UPDATED AND TRAINED AND WEBROOT DOES NOT WARRANT THAT SUCH ALGORITHMS AND MACHINE LEARNING ARE CORRECT OR COMPLETE. WEBROOT DOES NOT WARRANT THAT ACCESS TO THE SERVICE WILL BE CONTINUOUS OR UNINTERRUPTED, MEET CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, OR BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, NETWORKS, OR DATABASES. ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY COPYRIGHT OWNER OF SUCH OPEN-SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS.

   13.3. **Third-Party Platforms.** If Customer accesses the Service via a third-party platform or app store, Customer agrees that: (A) Webroot makes no representations or warranties regarding such platform or app store; (B) Webroot hereby disclaims all representations and warranties with regard to such platform or app store; and (C) as between Webroot

and Customer, Customer is solely responsible for its compliance with the third party's terms and conditions, and Webroot takes no responsibility or liability for any breach by Customer of any of those terms and conditions.

13.4. **Statutory Rights.** Customer may have other statutory rights. However, to the fullest extent permitted by law, the duration of statutorily required warranties, if any, will be limited to the Warranty Period above.

14. **Limitation of Liability.**

14.1. **EXCLUSION OF DAMAGES.** IN NO EVENT WILL WEBROOT AND ITS LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (B) LOSS OF GOODWILL OR REPUTATION; (C) LOSS, INTERRUPTION, OR DELAY OF THE ENABLING SOFTWARE OR SERVICE; (D) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (E) COST OF REPLACEMENT GOODS OR SERVICES; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER WEBROOT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

14.2. **CAP.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF WEBROOT AND ITS LICENSORS, DIRECTORS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL OF THE FEES PAID TO WEBROOT UNDER THIS AGREEMENT FOR THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

15. **US Government End Users Only**. For US government end-users only, each of the Enabling Software and Service is a "commercial item" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Enabling Software and Service with only those rights set forth therein.

16. **Export**. The Enabling Software and Service are subject to U.S. export control laws and regulations, and may be subject to foreign export or import laws or regulations. Customer agrees to comply strictly with all such laws and regulations and not to use or transfer the Enabling Software or Service for any use relating to nuclear, chemical, or biological weapons, or missile technology. Customer will indemnify and hold harmless Webroot and its licensors, directors, officers, employees, and representatives from all claims, damages, losses, and expenses (including attorneys' fees) arising from breach of this Section 16.

17. **High Risk Activity**. Customer acknowledges that the Service is not intended for use with any high risk or strict liability activity, including, without limitation, air or space travel, technical building or structural design, power plant design or operation, or life support or emergency medical operations or uses, and Webroot makes no warranty regarding, and will have no liability arising from, any use of the Enabling Software or Service in connection with any high risk or strict liability activity.

18. **Force Majeure**. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.

19. **Open Source Software and Third-Party Software**. The Enabling Software and Service may contain or be provided with components subject to the terms and conditions of third-party proprietary licenses ("**Third-Party Software**") or free/libre and open source software licenses ("**Open Source Software**"). An English-language list of Open Source Software that is distributed by Webroot is available at https://www.webroot.com/us/en/legal/opensource. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software itself, including, without limitation, any provisions governing access to source code, modification, or reverse engineering. Customer acknowledges that Customer's use of each open source component is subject to the open source license applicable to each open source component. Webroot makes no representations or warranties with regard to such open source components and assumes no liability that may arise from the use of such open source components. With respect to data licensed by Webroot regarding geographic information and other data associated with an IP address ("**GeoIP Databases**"), Customer

acknowledges that the limitations and disclaimers set forth in this Agreement apply to such GeoIP Databases and that the licensor of such GeoIP Databases has no liability in connection with this Agreement or Customer's use of the Service.

20. **Independent Contractors.** Customer's relationship to Webroot is that of a customer, and neither party is an agent or partner of the other. Customer does not and will not have, and will not represent to any third party that Customer has, any authority to act on behalf of Webroot.

21. **Equitable Relief.** Customer acknowledges that breach of one or more of its obligations under <u>Sections 5</u> (License Conditions) or <u>8</u> (Confidential Information) will cause Webroot to suffer immediate and irreparable harm for which money damages would be an inadequate remedy. Therefore, Customer agrees that if it breaches one or more of its obligations under either such sections, Webroot will be entitled to equitable relief as well as any additional relief that may be appropriate.

22. **Governing Law**. For any action relating to this Agreement, Customer agrees to the following governing law and exclusive jurisdiction and venue, according to Customer's location.

    22.1. **If Customer is located in the United States or Canada, this Agreement is governed by the laws of the State of Colorado without regard to its conflict of laws provisions**. Customer agrees to personal jurisdiction by and exclusive venue in the state and federal courts sitting in the State of Colorado, City and County of Denver, with regard to any and all claims arising out of or relating to the Services or this Agreement.

    22.2. **If Customer is located in Japan, this Agreement is governed by the laws of Japan without regard to its conflict of laws provisions**. Customer agrees to personal jurisdiction by and exclusive venue in the Tokyo District Court with regard to any and all claims arising out of or relating to the Services or this Agreement.

    22.3. **If Customer is located outside the United States, Canada, and Japan, this Agreement is governed by the laws of the Republic of Ireland without regard to its conflict of laws provisions**. Customer agrees to personal jurisdiction by and exclusive venue in the courts sitting in Dublin, Ireland, with regard to any and all claims arising out of or relating to the Services or this Agreement.

    22.4. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

23. **General**. Customer acknowledges that any translation of the English language version of this Agreement provided by Webroot is provided for Customer's convenience only, and that the English language version of the Agreement will take precedence over the translation in the event of any contradiction arising from translation. If any provision of this Agreement is held unenforceable, that provision will be enforced to the extent permissible by law and the remaining provisions will remain in full force and effect. All of Customer's notices required under this Agreement must be in writing and are considered effective: (A) 1 business day after Customer sends an email to: (i) the email address for Webroot as listed on a Quote; and (ii) paralegal@webroot.com, each with proof of receipt; or (B) 5 days after mailing, when sent via certified mail, return receipt requested and postage prepaid to: 385 Interlocken Crescent, Suite 800, Broomfield, Colorado 80021. By providing Customer's email address to Webroot or a Reseller, Customer agrees to receive all required notices from Webroot electronically to that email address. Such notices are effective upon being sent to the email address. It is Customer's responsibility to notify Webroot or the applicable Reseller of any change or update Customer's email address. Customer may not assign this Agreement without the prior written consent of Webroot, which will not be unreasonably withheld; provided, however, that Customer may freely assign or transfer Customer's rights or obligations hereunder to any affiliate or any successor to Customer's business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization, or otherwise. Webroot may assign this Agreement without Customer's consent, although Webroot may notify Customer of any assignment. No provision of this Agreement will be deemed waived unless the wavier is in writing and signed by Webroot. This Agreement applies to Customer's connection to, evaluation of, and use of the Enabling Software and Service but will be superseded to the extent its terms conflict with the terms of any mutually executed agreement between Customer and Webroot concerning the Enabling Software and Service.

24. **Defined Terms.**

    24.1. "**Agreement**" means this FlowScape Subscription Agreement between Customer and Webroot.

    24.2. "**Attachment**" means one of the documents set forth as an attachment to this Agreement and "**Attachments**" (if applicable) means all such documents.

    24.3. "**Beneficiary**" means a third-party organization for whom MSP provides Managed Services in accordance with <u>Attachment 1</u> for such organization's own internal business use.

24.4. "**Confidential Information**" means any non-public information that is exchanged between Customer and Webroot, provided that such information: (A) is identified as confidential at the time of disclosure by the disclosing party ("**Discloser**"); or (B) is disclosed under circumstances that would indicate to a reasonable person that the information should be treated as confidential by the party receiving such information ("**Recipient**"), except that in the case of Webroot, all non-public aspects of the Webroot Property are considered Confidential Information. Confidential Information does not include information that Recipient can demonstrate: (X) was rightfully known to Recipient without restriction on use or disclosure prior to such information being disclosed or made available to Recipient in connection with this Agreement; (Y) was or becomes generally known by the public other than by Recipient's or any of Recipient's authorized agent's noncompliance with this Agreement; or (Z) was or is received by Recipient on a non-confidential basis from a third party that, to Recipient's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality.

24.5. "**Customer**" means the entity identified on one or more Quotes that is receiving the Service.

24.6. "**Documentation**" means the written or electronic user documentation pertaining to use of the Service or operation of any Enabling Software, if applicable, under this Agreement.

24.7. "**Effective Date**" means the first to occur of the following: Customer's download, installation, or configuration of any Enabling Software; Customer's use of the Service; or Customer's payment of any invoice for the Service.

24.8. "**Enabling Software**" means the applicable software that Customer must download and install in Customer's network at one or more locations for purposes of enabling the Service.

24.9. "**Equipment**" means computer hardware provided to Customer solely for the purpose of allowing Customer to access the Service.

24.10. "**Evaluation Period**" means the period of time beginning 30 days after the Effective Date (or longer if set forth in a separate writing signed by Webroot) that Webroot licenses or grants Customer the right to receive the Evaluation Services.

24.11. "**Evaluation Services**" means the use of the Service as made available to Customer on a trial basis.

24.12. "**Fees**" means those fees and charges set forth in a Quote or otherwise communicated to Customer in writing for Customer's access to or use of the Service and, if applicable, the Enabling Software.

24.13. "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

24.14. "**Managed Services**" means the managed services provided by MSP to Beneficiaries through the use of the Service pursuant to a Quote.

24.15. "**MSP**" means a managed service provider.

24.16. "**Open Source Software**" means third-party software covered by an open source software license.

24.17. "**Quote**" means any written order or quote, in electronic or paper form, provided to Customer by or on behalf of Webroot, whether manually or electronically, that describes Customer's subscription to the Service and the Fees owed in connection therewith.

24.18. "**Reseller**" means a third party authorized by Webroot to resell or distribute the Service.

24.19. "**Service**" means the FlowScape Enterprise Edition Software-as-a-Service, as further identified in one or more Quotes.

24.20. "**Subscription Term**" means the period of time set forth on a Quote or the period of time otherwise communicated to Customer by or on behalf of Webroot wherein Customer is licensed to access and use the Service pursuant to the terms of this Agreement.

24.21. "**Third-Party Software**" means third-party software covered by a commercial license other than this Agreement.

24.22.   "**Warranty Period**" means the period of time beginning on the Effective Date and ending 120 days following the Effective Date.

24.23.   "**Webroot**" means either Webroot Inc. (if Customer is located in the United States or Canada), Webroot K.K. (if Customer is located in Japan), or Webroot International Limited (if Customer is located outside of the United States, Canada, and Japan).

24.24.   "**Webroot Property**" means: (A) the Service, Enabling Software, and Documentation; (B) any processes or methods (including any processes or methods developed while analysing Customer's or its Beneficiaries' networks) developed, created, owned, or licensed by Webroot associated with each of the items identified in subsection (A); and (C) all modifications, enhancements, and derivative works of each of the foregoing items identified in subsections (A) and (B).

1. **Additional Terms to Agreement.** If Customer is using the Service as an MSP, the provisions of this Attachment 1 apply to Customer. To the extent of any conflict between the provisions of this Attachment 1 of the Agreement and the rest of the Agreement, the provisions in this Attachment 1 prevail. Customer is referred to as "MSP" under this Attachment 1.

2. **Defined Terms.** All defined terms in this Attachment 1 have the meanings given to them in Section 24 of the Agreement, this Section 2, or in the section in which such terms are first defined.

   2.1. "**Personal Information**" means information provided to MSP by or at the direction of a Beneficiary, or to which access was provided to MSP by or at the direction of a Beneficiary, that identifies or can be used to identify an individual or that can be used to authenticate an individual, including, without limitation, government-issued identification numbers, financial identification numbers, names, addresses, telephone numbers, e-mail addresses, and other unique identifiers.

   2.2. "**Marks**" means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, proprietary symbols, and other indicia of origin provided by a party to the other from time to time in connection with this Agreement.

3. **Non-Exclusive Rights.**

   3.1. **License.** For so long as MSP complies with Sections 5 and 10 of the Agreement and Section 4 of this Attachment 1, Webroot hereby grants to MSP during the Subscription Term a non-exclusive, non-sublicensable, non-transferable license to: (A) download, install, configure, and use the applicable Enabling Software for the sole purpose of accessing and using the Service in accordance with the Subscription Documents; (B) use and make a reasonable number of copies of the Documentation (if any is provided) as necessary to use the Service, in each case above, solely as part of MSP's provision of Managed Services to Beneficiaries for such Beneficiaries' internal business use; and (C) use and display the most current version of the Service and Documentation solely for the non-production purposes of conducting demonstrations of the Managed Services for potential Beneficiaries.

   3.2. **Right to Access Services.** For so long as MSP complies with Sections 5 and 10 of the Agreement and Section 4 of this Attachment 1, Webroot will use commercially reasonable efforts to make the Service available to Customer solely as part of MSP's use and provision of Managed Services to Beneficiaries for such Beneficiaries' internal business use.

4. **Conditions on Use.** In addition to the applicable conditions set forth in Section 5 of the Agreement, as a condition to MSP's use of the Service, MSP must not: (A) knowingly permit any Beneficiaries to take any action or to refrain from taking any action that would result in a breach any of the conditions in Section 4 of the Agreement; or (B) use the Service for the provision of any services, other than the Managed Services, for the benefit of any third party.

5. **Trademark License.** Subject to the terms and conditions of this Section 5, Webroot and MSP ("**Mark Licensor**") each grants to the other ("**Mark Licensee**") a non-exclusive, non-transferable, non-sublicensable, revocable license to use and reproduce its Marks solely in connection with marketing the Managed Services. Neither party grants any rights in its Marks other than those expressly granted in this paragraph. Each party acknowledges the other party's exclusive ownership of its own Marks, and each party agrees not to take any action inconsistent with such ownership. Mark Licensee agrees to cooperate, at Mark Licensor's request and expense, in any action which Mark Licensor reasonably deems necessary or desirable to establish or preserve its exclusive rights in and to its Marks. Mark Licensee will not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to the Mark Licensor's Marks or in such a way as to create combination marks with Mark Licensor's Marks. For the avoidance of doubt, MSP will not be entitled to incorporate "*Webroot*" or "*FlowScape*" into MSP's domain names without Webroot's prior written approval. Mark Licensee will use Mark Licensor's Marks only in accordance with such guidelines as Mark Licensor may provide from time to time. At Mark Licensor's request, Mark Licensee will immediately modify or discontinue any use of the Mark Licensor's Marks.

6. **Branding.** MSP will use the Marks provided to it by Webroot to identify the Service, the Managed Services, and in all materials used to market and promote the Managed Services in a manner acceptable to Webroot and subject to the limitations and requirements in this Agreement and any guidelines provided to MSP by Webroot. MSP will at all times conduct business in a manner that reflects favorably on the Service, the Managed Services, and the good name, goodwill, and reputation of Webroot.

7. **Publicity.** Webroot and MSP will communicate and cooperate with respect to advertising and publicity regarding this Agreement and their relationship, and each will obtain the written consent of the other before publishing or releasing any advertising or publicity.

8. **Compliance with Laws; Personal Information.** MSP must at all times comply with all applicable laws and regulations in providing the Managed Services. MSP acknowledges that in the course of providing Managed Services, MSP may receive or have access to Personal Information. MSP must keep all Personal Information in strict confidence and comply with all applicable foreign, national, state, and local laws, regulations, and directives in MSP's collection, receipt, access, transmission, storage, disposal, use, and disclosure (collectively, "**Processing**") of such Personal Information, and be responsible for the Processing of Personal Information under MSP's control or MSP's possession. Without limiting the foregoing, MSP agrees that MSP and MSP's Beneficiaries are solely responsible for ensuring that any natural person provides freely given, specific, informed and unambiguous consent to the processing of such natural person's Personal Information by MSP as part of the Managed Services. To that end, MSP must provide, or cause MSP's Beneficiaries to provide, prominent and conspicuous notices to all applicable natural persons that explain: (1) the precise categories of Personal Information MSP collects from natural persons as part of the Managed Services and what MSP does with such Personal Information; (2) the purposes for such collection of Personal Information; (3) whether such Personal Information will be disclosed to third parties; (4) how MSP secures and protects such Personal Information; and (5) MSP's retention policies with respect to such Personal Information.

9. **Warranties Made By MSP.** MSP will not make or publish any false or misleading representations, warranties, or guarantees concerning the Service that are inconsistent with any warranties made by Webroot in this Agreement.

10. **Indemnification Made By MSP.** MSP will indemnify and hold harmless Webroot and its affiliates from and against all losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses, including attorneys' fees and costs (collectively "**Losses**"), suffered by Webroot or its affiliates that arise out of or relate to: (1) MSP's unauthorized Processing of Personal Information; or (2) MSP's failure to comply with any of MSP's obligations in Sections 8 or 9 above of this Attachment 1.

11. **Indemnification Made By Mark Licensor.** Mark Licensor will indemnify and hold harmless Mark Licensee from and against all Losses suffered by Mark Licensee as a result of a third-party claim against Mark Licensee alleging that Mark Licensor's Marks infringed that third party's trademark rights. If Mark Licensor's Marks become, or in Mark Licensor's opinion are likely to become, the subject of an infringement claim Mark Licensor will, at its option and expense, either: (1) procure for Mark Licensee the right to continue exercising the rights licensed to Mark Licensee in this Agreement; (2) replace or modify Mark Licensor's Mark so that it becomes non-infringing; or (3) terminate this Agreement by written notice to Mark Licensee. THIS PARAGRAPH STATES MARK LICENSOR'S ENTIRE LIABILITY AND MARK LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR SUCH INFRINGEMENT CLAIMS AND ACTIONS.