

PART 1: GENERAL TERMS AND CONDITIONS

1. ORDERS.

1.1 Ordering process.

- 1.1.1 Products and Services shall be procured by End User pursuant to an Order, either directly from Imperva or through an Authorized Third Party.
- 1.1.2 Each Order shall correspond to a Quote and shall set out the relevant SKUs and Licensed Volume. Each SKU represents a separate contractual entitlement to a Product or Service.
- 1.1.3 Imperva shall be free to accept or reject an Order in its absolute discretion. An Order shall only become legally binding on Imperva when it has been accepted by Imperva.
- 1.1.4 Each Order, together with the corresponding Quote, shall form a part of, be incorporated by reference into, and be subject to, this Agreement. To the extent there is any inconsistency between this Agreement and a provision in an Order, this Agreement shall prevail, except where the relevant provision(s) explicitly and expressly refers to and states that such provision(s) of the Order shall override the conflicting provision(s) of this Agreement and the Order has been signed by a duly authorized representatives Imperva and End User.
- 1.1.5 Unless expressly stated in this Agreement or agreed to in writing by the parties, termination of any Order shall not affect any other Order. Upon termination of this Agreement, however, all Orders shall automatically terminate.

1.2 Direct Orders.

For Orders issued to Imperva directly by End User, End User shall pay the applicable fees directly to Imperva in accordance with Section 2 of this Agreement.

1.3 Ordering via an Authorized Third Party.

- 1.3.1 For Orders issued to Imperva through an Authorized Third Party, End User shall pay the Authorized Third Party the applicable fees in accordance with the terms agreed between End User and the Authorized Third Party (and not in accordance with Section 2 of this Agreement).
- 1.3.2 The terms governing the use of Product and Services ordered though an Authorized Third Party shall be those set out in this Agreement.
- 1.3.3 Imperva may in its sole discretion agree in writing to be bound by Quote-specific terms and conditions. Any such Quote-specific terms which purport to amend this Agreement must be signed by a duly authorized representatives of Imperva and End User.
- 1.3.4 Should a service credit, refund or other payment become due to End User pursuant to this Agreement in respect of an Order issued through an Authorized Third Party, End User acknowledges and agrees that unless the Authorized Third Party agrees otherwise:
 - (a) such service credit, refund or other payment shall be provided by Imperva to the relevant Authorized Third Party; and
 - (b) End User may only obtain such service credit, refund or other payment from that Authorized Third Party.
- 1.3.5 Authorized Third Parties are not permitted to bind Imperva to any terms other than those expressly set out in this Agreement. Any term, representation, warranty or other statement communicated to End User by an Authorized Third Party as part of the procurement of the Products or Services, and that is not expressly set out in this

Agreement, shall not be binding upon Imperva.

- 1.3.6 Should an End User fail to pay any amount to an Authorized Third Party in respect of an Order, End User agrees that Imperva may suspend or terminate an Order where an Authorized Third Party requests it to do so.

1.4 Exceeding the Licensed Volume.

If End User exceeds the Licensed Volume set out in the Order for any applicable SKU, End User shall pay Imperva, or the relevant Authorized Third Party if applicable, the additional fees set out in the Order, or if no fees are set out in the Order, Imperva's then-current rate.

1.5 Trial conversion

The following terms shall apply to End Users who convert Evaluation Products to paid-for entitlements through the self-service "trial conversion" portal. Notwithstanding any other term: (i) Orders shall be limited to specific SKUs available through the trial process and paid-for entitlements converted in this way shall be for a subscription of either rolling one year or rolling monthly terms, as elected by End User; (ii) End User must provide and maintain with Imperva, or its third party payment provider as directed, a current, valid, accepted method of payment through the portal; (iii) End User authorizes Imperva, or its third party payment provider to charge the applicable fees in respect of the subscription in advance for the full annual term or on a monthly basis, on the dates and frequency as indicated on the Order; (iv) End User shall remain responsible for any uncollected amounts if payment was not successfully settled with the payment method, and Imperva reserves the right to suspend the Products until a valid payment method is provided and charged; and (v) End User may elect to terminate its subscription upon no less than thirty (30) days' notice to Imperva before the end of the then subscription term, otherwise such subscription shall renew for additional terms.

2. PAYMENTS TO IMPERVA.

2.1 Payment terms.

- 2.1.1 Any fees payable to Imperva under this Agreement are non-refundable and non-cancellable.
- 2.1.2 All fees shall be payable in US Dollars.
- 2.1.3 All payments from End User to Imperva shall be payable by End User net thirty (30) days after the date of invoice.
- 2.1.4 If End User is thirty (30) days or more overdue on any payment owed to Imperva pursuant to this Agreement, in addition to any of its other rights or remedies, Imperva reserves the right to charge a late fee on any overdue amounts at a rate equal to 1.5% per year or the highest rate permitted by applicable law or regulation, whichever is lower. End User shall reimburse Imperva for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting overdue amounts pursuant to this Agreement.

2.2 Taxes.

- 2.2.1 End User shall pay all sales, use, value-added and other taxes, tariffs and duties of any type assessed against End User.
- 2.2.2 Should End User be required under any law or regulation of any governmental entity or authority to withhold or deduct any portion of the payments due to Imperva, then End User shall increase the sum payable to Imperva by the amount necessary to yield to Imperva an amount equal to the sum it would have received had no withholdings or deductions been made.

2.3 Invoicing.

Imperva may invoice all fees for Products and Services (excluding T&M Services) in full upon Imperva's acceptance of an Order, unless the applicable Quote states otherwise. Fees for T&M Services shall be invoiced monthly in arrears and fees where the Licensed Volume has been exceeded shall be invoiced in accordance with Imperva's then-current policy.

2.4 No set-off.

Neither party shall have any right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other party under this Agreement for any reason.

3. TERM; TERMINATION.

3.1 Term.

3.1.1 The term of each Order shall commence on the date the Order is accepted by Imperva and shall continue in effect for such time as End User continues to have the right to use the Products and / or receive the Services.

3.1.2 The term of this Agreement shall commence upon the Effective Date and shall continue in effect until this Agreement is terminated in accordance with its terms.

3.2 Termination.

3.2.1 Either party shall be entitled to terminate this Agreement at any time upon notice in writing to the other if the other party:

- (a) commits a material breach of this Agreement which is not capable of remedy;
- (b) commits a material breach of this Agreement that is capable of remedy but which remains unremedied for more than thirty (30) days after such notice; or
- (c) makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event.

3.3 Consequences of termination.

3.3.1 Upon termination or expiration of this Agreement, Imperva shall cease to provide the Products and Services pursuant to all Orders that may be in place between Imperva and the End User at the relevant time, the rights and licenses granted to End User under this Agreement and all such Orders shall terminate and each party shall promptly return or destroy the other party's Confidential Information in accordance with the provisions of Section 4.2.3.

3.3.2 Upon expiration of End User's rights with respect to a particular Product or Service pursuant to this Agreement, Imperva shall cease to provide such Product or Service, and the applicable rights and licenses granted to End User with respect to such Product or Service under this Agreement shall automatically and immediately terminate.

3.3.3 Termination shall not relieve End User of the obligation to pay any fees accrued or payable to Imperva or an Authorized Third Party prior to the effective date of expiration or termination, nor shall it revoke any perpetual license to the Software.

3.3.4 The following sections shall survive any termination or expiration of this Agreement: Sections 2, 3.3, 4, 5 (for one year after termination of the Agreement), 6, 7, 8, 9 and 10 of this Part 1; Sections 1.2, 1.3, 1.4 and 5.1 of Sub-part 2.1; Sections 1.2, 1.4 and 2 of Sub-part 2.2; Section 2.4 of Sub-part 2.3; and Sections 3.2 and 5 of Sub-part 2.4.

3.4 Temporary suspension and delay.

3.4.1 Imperva has the right, without liability to Imperva, to suspend in whole or in part End User's rights to access or use any Products or Services immediately upon notice if:

- (a) End User is in breach of its payment obligations to Imperva, or to an Authorized Third Party, in respect of any Order until any overdue amounts are paid in full; or
- (b) End User makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event.

3.4.2 If Imperva suspends access or use pursuant to Section 3.4.1, End User shall:

- (a) remain responsible for all fees (to Imperva and/or an Authorized Third Party) during the period of suspension; and
- (b) not be entitled to any service credits for any period of suspension.

3.4.3 Without liability to End User or any other person and without prejudice to any other remedy, Imperva may withhold or delay Delivery of any Order if End User is late in any payment obligation pursuant to this Agreement or is otherwise in default under this Agreement.

4. CONFIDENTIALITY.

4.1 Confidential Information.

4.1.1 As used in this Agreement, "**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 that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

4.1.2 Imperva's Confidential Information includes, without limitation, the Products and Services, their performance (including any benchmarking information), any compliance certifications or attestation reports in respect of the Products and Services and Imperva's pricing of the Products and Services.

4.1.3 Confidential Information shall not include any information that:

- (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
- (b) was rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence);
- (c) was independently developed by the Receiving Party without access of or reference to the Disclosing Party's Confidential Information or any breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence); or

- (d) is received from a third party which is not under an obligation of confidence or non-use with respect to such information and without breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence).

4.2. Treatment of Confidential Information.

4.2.1 The Receiving Party agrees that it shall:

- (a) use Confidential Information for the sole purpose of exercising or enforcing its rights and performing its obligations under this Agreement;
- (b) divulge and allow access to Confidential Information only to those of its employees, directors, independent consultants or agents who have a need to know such Confidential Information and who are bound by professional duty or in writing (in advance) to confidentiality and non-use obligations at least as protective of such information as this Agreement;
- (c) not disclose any Confidential Information to any third party except as described in Section 4.2.1(b); and
- (d) use at least the same degree of care in protecting the Disclosing Party's Confidential Information as the Receiving Party uses to preserve and safeguard its own valuable proprietary information, but in any event, no less than a reasonable standard of care.

4.2.2 The Receiving Party shall notify and cooperate with the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party. The Receiving Party may disclose Confidential Information to comply with an order from a court of competent jurisdiction or with a mandatory requirement of a governing regulatory body, provided such party, to the extent permitted by law and as soon as reasonably practicable under the circumstances, informs the Disclosing Party and allows the Disclosing Party the opportunity to object to the disclosure order or to take action to preserve the confidentiality of the information. The Receiving Party shall cooperate with the Disclosing Party in such party's reasonable efforts to limit the disclosure of the information.

4.2.3 Upon termination of this Agreement, the Receiving Party shall:

- (a) immediately cease all use of the Disclosing Party's Confidential Information; and
- (b) if requested by the Disclosing Party, either promptly destroy or return all Confidential Information of the Disclosing Party,

provided, that the Receiving Party may retain a reasonable number of copies of the Confidential Information (and any materials embedding the same) for the sole purposes of satisfying legal or regulatory requirements regarding record and data retention that the Receiving Party is obligated to comply with, enforcing this Agreement and/or archiving consistent with good business practices. Retained copies of Confidential Information remain subject to the confidentiality and restricted use provisions of this Agreement.

4.2.4 If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 4, the Disclosing Party may have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts.

5. AUDIT.

5.1 Right to audit.

5.1.1 Imperva shall have the right during the term of this Agreement, and for one year thereafter, to:

- (a) audit and/or inspect End User's systems and records to verify End User's use of the Products and Services; and / or
- (b) otherwise validate compliance with this Agreement.

5.2 Audit terms.

Audits shall be carried out on reasonable notice by Imperva and/or its selected external auditor. End User shall provide Imperva and/or its selected external auditor with access to its relevant systems and records. Imperva shall pay the expenses of the audit, unless such audit reveals an underpayment of five percent (5%) or more or any other material breach of this Agreement, in which case End User shall promptly pay Imperva the reasonable fees and expenses incurred by Imperva for such audit. End User shall promptly pay Imperva or an Authorized Third Party, as applicable, the amount of any underpayment (and correct any other non-compliance) revealed by such audit.

6. DISCLAIMER OF WARRANTIES.

EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED AND/OR LICENSED "AS-IS" AND IMPERVA MAKES NO ADDITIONAL WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IMPERVA MAKES NO WARRANTY THAT USE OF THE PRODUCTS OR SERVICES SHALL BE UNINTERRUPTED, ERROR-FREE OR DEFECT-FREE, OR AVAILABLE AT ALL TIMES. IMPERVA SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS PARTNERS AND SUPPLIERS, ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7. LIMITATION OF LIABILITY.

7.1 IN NO EVENT SHALL IMPERVA'S (AND ITS AUTHORIZED THIRD PARTIES' OR SUPPLIERS') TOTAL AND AGGREGATE LIABILITY ARISING FROM ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT (INCLUDING ALL PRODUCTS AND SERVICES HEREUNDER) EXCEED THE TOTAL AMOUNTS PAID BY END USER TO IMPERVA FOR THE PRODUCTS OR SERVICES IN RESPECT OF THE TWELVE (12) MONTH-PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE APPLICABLE CLAIM, LESS ALL AMOUNTS PAID BY IMPERVA TO CUSTOMER FOR ALL PAST CLAIMS OF ANY KIND ARISING UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7.2 IN NO EVENT SHALL IMPERVA (OR ITS AUTHORIZED THIRD PARTIES' OR SUPPLIERS') HAVE ANY LIABILITY IN CONNECTION WITH THE PRODUCTS, SERVICES OR THIS AGREEMENT FOR ANY LOST PROFITS OR REVENUES, LOSS OF DATA OR USE, GOODWILL, REPUTATION, INTERRUPTION OF THE SERVICES, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7.3 END USER ACKNOWLEDGES AND AGREES THAT IMPERVA HAS OFFERED THE PRODUCTS AND SERVICES, AND SET PRICES IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN END USER AND IMPERVA. IMPERVA WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS OR SERVICES ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

7.4 EXCEPT FOR (I) END USER'S BREACH OF ITS PAYMENT OBLIGATIONS TO IMPERVA OR ANY AUTHORIZED THIRD PARTIES, AND (II) END USER'S BREACH OF SECTION 8.2 (LICENSES AND RESTRICTIONS) OR SECTION 10.1 (EXPORT), IN NO EVENT SHALL END USER'S TOTAL AND AGGREGATE LIABILITY ARISING FROM ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT (INCLUDING ALL PRODUCTS AND SERVICES HEREUNDER) EXCEED THE TOTAL AMOUNTS PAID BY END USER TO IMPERVA FOR THE PRODUCTS OR SERVICES IN RESPECT OF THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE APPLICABLE CLAIM, LESS ALL AMOUNTS PAID BY IMPERVA TO CUSTOMER FOR ALL PAST CLAIMS OF ANY KIND ARISING UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7.5 EXCEPT FOR (I) END USER'S BREACH OF ITS PAYMENT OBLIGATIONS TO IMPERVA OR ANY AUTHORIZED THIRD PARTIES, AND (II) END USER'S BREACH OF SECTION 8.2 (LICENSES AND RESTRICTIONS) OR SECTION 10.1 (EXPORT), IN NO EVENT SHALL END USER HAVE ANY LIABILITY IN CONNECTION WITH THIS AGREEMENT TO IMPERVA FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

7.6 NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY:

7.6.1 FOR FRAUD;

7.6.2 FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THAT OF ITS EMPLOYEES OR AGENTS OR SUBCONTRACTORS; OR

7.6.3 TO THE EXTENT SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY LAW.

8. PROPRIETARY RIGHTS.

8.1 Reservation of Rights.

Subject to the limited rights expressly granted to End User under this Agreement, Imperva reserves and, as between the parties shall solely own all rights, title and interest in and to the, the Products (excluding any Appliances sold to End User pursuant to the terms of this Agreement) and Services, including all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all intellectual property rights in and to any of the foregoing, and to the extent any such rights vest in End User, End User shall automatically and irrevocably assign such rights to Imperva. No rights are granted to End User hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set out in this Agreement.

8.2 License and use restrictions.

End User may not (and may not permit any third party to) directly or indirectly:

- (a) modify, incorporate or use in any other works, translate, reverse engineer (except to the limited extent applicable statutory law expressly prohibits reverse engineering restrictions), decompile, disassemble, otherwise attempt to derive source code from or create derivative works based on the Products;
- (b) make unauthorized copies of the Products;
- (c) disclose, distribute, transfer or market the Products or any material associated with the Product or Services to third parties;
- (d) remove or modify any proprietary notices, labels or marks on or in any copy of the Products or any material associated with the Product or Services;
- (e) distribute, sell, sublicense, rent, lease or use the Products or Services (or any portion) for time sharing, hosting, service provider or other computer services to third parties or otherwise make the functionality of the Products available to third parties;
- (f) publicly disseminate reports generated by the Products / Services or Product / Service performance information or analysis (including, without limitation, benchmarks and performance tests) from any source relating to the Products;
- (g) access the database or any other third party product that is embedded in the Products with applications (including spiders, robots, crawlers or any other similar data mining tools) other than the Products;
- (h) use the Products / Services or reports generated by the Products / Services in End User's products or services or in its marketing of products or services to third parties;
- (i) use the Product / Services or reports generated by the Products / Services to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Products / Services;
- (j) use the Products / Services to store, transmit, upload or post any infringing or otherwise unlawful or tortious material or any data for which it does not have the necessary consents or rights to store, transmit, upload or post (as applicable) in connection with the Products;
- (k) use the Products / Services in a way that does not comply with applicable law; or
- (l) use the Products / Services other than as expressly authorized in this Agreement.

8.3 Feedback.

From time to time End User may provide Imperva with suggestions, feature requests, comments and feedback with regard to the Products and Services (collectively, "**Feedback**"). End User grants Imperva a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Imperva's business purposes, including, without limitation, the testing, development, maintenance and improvement of Imperva's products and services.

9. INDEMNIFICATION

9.1 Subject to Sections 9.2 to 9.4 (inclusive), Imperva shall defend End User against any third party claim that the Products as provided infringe any patent, or any copyright, or misappropriates any third party trade secrets ("**Infringement Claim**") and indemnify End User from the resulting costs and damages finally awarded against

End User to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in a settlement; provided that End User:

- (a) promptly notifies Imperva of any and all threats, claims and proceedings involving such Infringement Claim;
- (b) gives reasonable assistance in response to Imperva's request for assistance; and
- (c) grants Imperva sole control over defense and settlement of the Infringement Claim.

9.2 Section 9.1 shall not apply to any Infringement Claim or associated costs or damages arising out of or in connection with the Products or portions or components:

- (a) that are modified by any party other than Imperva or its authorized agents;
- (b) that are combined with other products, services, processes, software, content, data or materials, where the alleged infringement relates to such combination or such other products, services, processes, software, content, data or materials;
- (c) where modifications that would have avoided the alleged infringement have been made available to End User, and End User continues the allegedly infringing activity after being notified of it by Imperva; or
- (d) where End User's use of such Products is not strictly in accordance with this Agreement.

9.3 In the event that a Product is held to or believed by Imperva to infringe or misappropriate any intellectual property rights of a third party, Imperva at its discretion, shall have the option to:

- (a) modify the allegedly infringing Product to be non-infringing;
- (b) obtain for End User a license to continue using the Product; or
- (c) request the return of or terminate access to the infringing Product (as the case may be) and upon such return or termination, refund to End User (or have the applicable Authorized Third Party refund) the amount of fees paid for such infringing Product for any unused, prepaid portion of the term remaining as of the effective date of termination.

9.4 **THIS SECTION 9 SETS OUT IMPERVA'S SOLE OBLIGATION AND END USER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF AN INFRINGEMENT CLAIM AND RELATED VIOLATIONS OF THIRD PARTY RIGHTS.**

10. GENERAL.

10.1 Export.

10.1.1 End User acknowledges that the Products and Services contain encryption technology that is subject to export restrictions by the U.S. government and import restrictions by certain other governments. End User shall not directly or indirectly and shall not allow any third-party to remove or export, or allow the export or re-export of, any part of the Products or Services or any direct product of the Products and Services:

- (a) into (or to a national or resident of) any territory to the extent the U.S. government or any agency of it restricts export or re-export to such countries;
- (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals;

- (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency of it requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval;
- (d) to the extent the Products or Services fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (i) to the Russian Federation, Belarus or for use in the Russian Federation, Belarus and in the Ukrainian territories controlled by the Russian Federation, or (ii) to any individual or entity subject to E.U. sanctions or restrictive measures, as well as to any entity owned, controlled or acting for individuals or entities subject to EU sanctions or restrictive measures; or
- (e) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or other government agency or authority.

10.1.2 End User shall immediately notify Imperva of any violation of Section 10.1.1.

10.1.3 End User agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products and Services are restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government.

10.1.4 End User agrees to indemnify and hold Imperva, its partners and suppliers harmless against any claims, losses or expenses arising out of End User's breach of this Section 10.1.

10.1.5 Any breach of this Section 10.1 shall be deemed a material breach which is not capable of remedy.

10.2 Anti-corruption

End User shall comply with any and all applicable anti-corruption and influence-peddling laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and French law No. 2016-1691 of 9 December 2016 on transparency, anti-corruption and the modernisation of the economy (the "Sapin II Law"). Without limiting the foregoing, End User shall not, directly or indirectly, make, promise to make, or accept any payment, promise, donation, gift, offer or transfer of anything of value in connection with this Agreement to: (i) anyone working in an official capacity for a government, government entity (including employees of government owned or controlled corporations) or public international organization; (ii) any political party, party official, or candidate for political office; (iii) an intermediary for payment to any of the foregoing; (iv) any officer, director, employee of any actual or potential customer of End User; (v) any officer, director or employee of Imperva or any of its affiliates; or (vi) any other person or entity if such payment, offer or transfer would violate the laws of the country in which made or which would be linked to a misuse that would be made by that person, or that has already been made by that person, of his/her real or supposed influence with a view to obtaining, for itself or for others, a distinction, a job, a contract or any other favourable decision. It is the intent of the parties that no payments, offers or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity. Neither party shall solicit or accept for itself any offer, promise, donation, gift or benefit of any kind, for the purpose of misusing its influence with a view to making or obtaining any favourable decision. Each of the Parties declares that it has implemented a compliance program that meets the requirements of the Sapin II Law, insofar as it is subject to it.

10.3 Force Majeure.

Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a party's payment obligations) if the delay or failure is due to events which are beyond the reasonable control of the parties, including, but not limited to strikes, pandemics, epidemics, public health emergencies, blockade, government-imposed travel restrictions and quarantines, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, communications failure, and internet and power outages or disruptions.

10.4 Governing Law; Jurisdiction.

This Agreement shall be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles. The parties consent to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California for resolution of any disputes arising out or relating to this Agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement in any manner whatsoever.

10.5 End User Mention.

End User consents to Imperva using its name and logo to identify End User as a customer of Imperva, including use on Imperva's website and other marketing materials. Any use shall be subject to Imperva complying with any guidelines that End User may deliver to Imperva from time to time regarding the use of its name and logo. This consent terminates upon termination of this Agreement.

10.6 Independent contractors.

The parties are independent contractors under this Agreement and nothing in this Agreement authorizes a party to act as an agent of the other or bind the other to any transaction or agreement.

10.7 Assignment.

This Agreement shall bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement in whole or in part by operation of law or otherwise, without the other party's prior written consent. Any attempt to transfer or assign this Agreement without such written consent shall be null and void. Notwithstanding the foregoing, however, Imperva may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which Imperva (or a subsidiary, division or group of Imperva) is the acquired entity (whether by merger, reorganization, acquisition or sale of stock), or to the purchaser in connection with the sale of all or a portion of Imperva's assets.

10.8 Third party rights.

The parties agree that there shall be no third party beneficiaries to this Agreement, except to the extent set out in the Third Party Terms that an entity is an intended third party beneficiary of this Agreement (which may be amended without the consent of such beneficiaries).

10.9 Waiver and remedies.

10.9.1 Except as specifically provided in this Agreement, the exercise by either party of any rights and remedies under this Agreement (including any right to terminate this Agreement) shall be without prejudice to its other remedies under this Agreement or otherwise.

10.9.2 A waiver of any breach under this Agreement shall not constitute a waiver of any other breach or future breaches.

10.9.3 Except as otherwise set out in this Agreement:

- (a) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver; and
- (b) no single or partial exercise of any right, remedy, power, or privilege pursuant to this Agreement shall preclude any other or further exercise of it or the exercise of any other right, remedy, power, or privilege.

10.10 Amendments.

This Agreement may be modified or waived only in a written instrument signed by duly authorized representatives of both parties.

10.11 Counterparts.

This Agreement may be executed in counterparts, including by transmission in.pdf or other means of electronic transmission, each of which shall constitute an original and together shall constitute one instrument.

10.12 Notices.

10.12.1 All notices, requests, demands and other communications pursuant to this Agreement shall:

- (a) if issued to Imperva: be in writing to legal@imperva.com and to the address set out on the cover page of this Agreement;
- (b) if issued to End User: be in writing to the email and / or to the address set out on the cover page of this Agreement; and
- (c) with respect to either party, be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); (iii) two (2) days after it is sent if by overnight delivery by a major commercial delivery service, delivery verified; or (iv) twenty four (24) hours after an email is sent to the most recent email address in Imperva's files.

10.12.2 Either party may, by like notice, specify or change an address to which notices and communications shall from then on be sent.

10.13 Entire Agreement.

10.13.1 Along with the relevant Order in respect of the Products and / or Services to which it relates, this Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written between the parties with respect to said subject matter, including any prior non-disclosure agreements.

10.13.2 Without limiting the generality of Section 10.13.1, any terms and conditions contained in any purchase order, vendor/supplier registration form, questionnaire or any other form or document that End User may provide to Imperva in connection with this Agreement and/or the Products or Services shall be void, regardless of whether Imperva fails to object to such terms and whether such forms were provided prior to or after the Effective Date.

10.13.3 Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Agreement). Each party waives all rights and remedies which, but for this Section 10.13, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.

10.13.4 Nothing in this Agreement limits or excludes any liability for fraud.

10.14 Severability and binding effect.

If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the provision shall be changed and interpreted, if possible, to accomplish the original intent of the parties within the constraints of the law, or if not possible, the provision shall be stricken from the Agreement. The remaining provisions of the Agreement shall remain in full force and effect.

10.15 Authority to contract.

Each party represents that it has the required legal capacity, corporate power and authority to enter into and perform this Agreement, and that this Agreement has been duly and validly executed and constitutes the legal, valid and binding obligation of such party and is enforceable against such party in accordance with its terms.

11. INTERPRETATION

11.1 Defined terms.

In this Agreement, the following capitalized terms shall have the meanings set out below:

“Agreement”	has the meaning set out on the cover page;
“Authorized Third Party”	means a third party that has a valid entitlement to procure Products and Services for onward resale to an End User;
“Appliance”	means the hardware on which certain Software operates, in each case as identified by the applicable SKU;
“Confidential Information”	has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;
“Console”	means the interface through which certain features of the Software or Infrastructure may be accessed and configured;
“Customer Support Guide”	means the part of the Documentation that describes support;
“Data and Security Terms and Conditions”	means the terms and conditions set out in Part 4 of this Agreement;
“Delivery”	means, (i) in the case of Software, when the Software is made available by Imperva for End User to electronically download; (ii) in the case of Infrastructure, when the Infrastructure has been made available by Imperva for End User to access; and (iii) in the case of an Appliance, when the Appliance has been tendered by Imperva for shipment. The term “Deliver” shall be construed accordingly;
“Disclosing Party”	has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;
“Documentation”	means Imperva’s standard materials that describe the Products, including the installation, use, operation, features and / or functionality of the Products, and how Imperva provides maintenance and / or support in relation to the same, as available at https://docs.imperva.com/ as updated by Imperva from time to time;
“Effective Date”	means the date set out on the cover page of this Agreement;
“End User”	means the entity set out on the cover page;
“Evaluation License”	has the meaning set out in Section 2 of Sub-part 2.5;
“Evaluation Period”	has the meaning set out in Section 3.1 of Sub-part 2.5;
“Evaluation Product”	means a Product that Imperva has elected to make available to End User on a temporary, without charge basis, for non-commercial use solely for internal evaluation purposes;

“Feedback”	has the meaning set out in Section 8.3 of Part 1 of this Agreement;
“General Terms and Conditions”	means the terms and conditions set out in this Part 1 of this Agreement;
“Group Companies”	means all entities which are controlled by Imperva, or under common control with Imperva, where “control” means the indirect or direct or beneficial ownership of a voting interest of more than fifty percent (50%);
“Infrastructure”	means Imperva’s or its licensor’s application and / or network protection solutions, in each case as identified by the applicable SKU;
“Infrastructure SLA”	has the meaning set out in Section 3 of Sub-part 2.2 of this Agreement;
“Infringement Claim”	has the meaning set out in Section 9.1 of Part 1 of this Agreement;
“License Definitions and Rules”	means the document set out at https://www.imperva.com/licensedefinitionsandrules or such other location as Imperva may specify from time to time;
“Licensed Volume”	means the volume or other measurement or conditions of permitted use for the Products as set out for the applicable SKU or as otherwise set out in a Quote;
“Order”	means, (i) an order form executed by End User and submitted to Imperva or (ii) a purchase order submitted by End User, by an Authorized Third Party on behalf of End User, in each case, in response to a Quote (which the Order is deemed to include) and that is accepted by Imperva;
“Product Specific Terms and Conditions”	means the terms and conditions set out in Part 2 of this Agreement;
“Products”	means the Software, the Infrastructure and the Appliances;
“Quote”	means an Imperva sales quotation which sets out Products and Services by SKU and which may include corresponding descriptions and details of the applicable Licensed Volume;
“Receiving Party”	has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;
“Service Description”	has the meaning set out in Section 1.1 of Sub-part 3.1 of this Agreement;
“Service Outcome”	means a specific set of configuration tasks as set out in the Service Description;
“Services”	means the Subscription Services, T&M Services and Training Services;

“Services Specific Terms and Conditions”	means the terms and conditions set out in Part 3 of this Agreement;
“SKU”	means Imperva’s internal stock keeping unit for each of its Products and Services, which may include corresponding Product descriptions and details of the applicable Licensed Volume;
“Statement of Work”	means a signed description of T&M Services;
“Software”	means Imperva’s or its licensors’ software (in object code format), provided to End User by Imperva or an Authorized Third Party, in each case as identified by the applicable SKU;
“Subscription Services”	means Imperva’s non-Infrastructure subscription service offerings, including support and maintenance service offering, in each case as identified by the applicable SKU and subject to Sub-part 3.1 of the Services Specific Terms;
“T&M Services”	means such other services set out in a Statement of Work that Imperva may provide pursuant to this Agreement, excluding Subscription Services and Training Services and subject to Sub-part 3.2 of the Services Specific Terms;
“Third Party Products”	means Products which are licensed to Imperva by a third party and are subject to the Third Party Terms;
“Third Party Terms”	means the document set out at https://www.imperva.com/thirdpartynotices or such other location as Imperva may specify from time to time;
“Threat Data”	has the meaning set out in Section 2.4(c) of Sub-part 2.2;
“Training Services”	means the training services set out in Imperva’s training catalog, in each case as identified by the applicable SKU and subject to Sub-part 3.3 of the Services Specific Terms;
“Traffic”	has the meaning set out in Section 2.4(b) of Sub-part 2.2 of this Agreement; and
“Usage Data”	has the meaning set out in Section 5.1 of Sub-part 2.1 of this Agreement.

11.2 Interpretation.

In this Agreement (except where the context otherwise requires):

- (a) any reference to a Section is to the relevant Section of the relevant part or sub-part of this Agreement as applicable;
- (b) the Section headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) words importing a particular gender do not exclude other genders;

- (d) use of the singular includes the plural and vice versa;
- (e) references to any law include a reference to that law together with all rules and regulations made under it or them, all as from time to time amended, consolidated or re-enacted;
- (f) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- (g) references to other documents that are incorporated by reference shall include those documents as amended from time to time; and
- (h) any grant of license, permission or other right set out in this Agreement for the benefit of Imperva shall be deemed to confer the same benefit on Imperva's Group Companies.