



## Services Terms and Conditions

Between

Sommerford Associates Limited

AND

XXXXXXX (Client)

Dated xx/xx/xx

## Introduction

This time and materials Services Agreement ("Agreement") is between Somerford Associates ("Somerford") and xxxxxxxxxxxxxxxx ("Customer"). This Agreement defines the scope of the services ("Services") that Somerford Associates will provide to the Customer.

## Project Summary

To be completed for each project

## Project Conditions

- Services are performed on a "time and materials" basis. The cost set out in this Agreement is a "not to exceed" amount. Should any items require additional time to complete then an additional Agreement will be agreed by both parties.
- The Customer will provide remote access via WebEx, LogMeIn or another comparable remote access solution to the Somerford Engineer in order to facilitate the delivery of offsite Services and/or troubleshooting as required.
- Every effort has been made to account for whether a particular service will be delivered offsite or onsite. However, in certain circumstances, services previously designated as "onsite" may be performed remotely (offsite) and in such case no credit for the difference in the fees associated with these different "day types" will be provided to the Customer.
- If after six months from the date of the Effective Date there remain unused/undelivered days of services, the Customer will contact Somerford Associates to discuss scheduling services for those days. Unless otherwise agreed in writing, any unused and unscheduled days of services will expire one year from the date of the signing of this SOW, at which point Somerford Associates will be under no obligation to perform any additional services under this SOW. No credit/refund of unused service days will be provided.

## Requirements

Please itemise each requirement, providing a name and description for each individual work item.

Work Item Name	Work Item Description

## Contacts

	Name	Email	Phone
Sommerford Commercial			
Sommerford Technical			
Client Management			
Client Technical			

## Client Responsibilities

The work will be performed under the scope as defined in this Agreement. The Agreement is subject to the following assumptions:

### The client

- will provide access to equipment and personnel (including technical resources) necessary to complete the project. These resources will be provided when they are needed in order to avoid project delays.
- will appoint a single point of contact for the duration of the project. This person will have project management responsibilities, be technically astute and familiar with change request processes as well as have the authority to expedite if necessary.
- must provide Somerford a one (1) week notice for any cancellation or change of scheduled services or they will be charged for the originally scheduled time and any applicable travel change fees.
- will provide Somerford with access to the required servers and software to complete the Agreement requirements.
- will provide the Somerford consultant(s) with either access to the Internet or access to a computer with access to the Internet as required.
- prior to the testing phase, the Customer is responsible for producing the necessary testing scenarios.
- will either provide Somerford with a contact that has the proper administrative access to all applications and servers and will have the ability to reboot servers as necessary within twenty-four (24) hours of request or will provide Somerford with this capability.
- will ensure all systems meet the minimum system requirements.
- will ensure all systems and applications that are part of the SOW must be on supported platforms.

## Amendment to the Scope

During the performance of the engagement, certain issues may arise that effectively prevent the completion of the work outlined in this Agreement within the planned timeframe, such as, but not limited to, hardware or network failures or outages in the Client's environment, problems with the Client's in-house or third-party software, or the unavailability of key Client personnel. If this situation occurs, the designated Somerford Consultant will work with the Client to identify and document the scope change, its impact on the project approach, timing, fees, resources, and the quality of project results. Somerford will document this and any change in scope must be agreed to in writing prior to Somerford reengaging on the project and will require the signature of both Somerford and the Client. Any other problems, disputes or issues arising during this engagement should be communicated as soon as possible after identification to the designated Somerford Consultant for resolution.

## Fees

Somerford professional services rate are as per the G-Cloud 13 price list. All prices are quoted exclusive of VAT

## Payment

Invoices are to be paid within 30 days from the invoice date.

## Duration

Somerford estimate that the Agreement will require the following number of professional services days to complete.

## Quote

x days of professional services \* £x's

## END USER LICENSE AGREEMENT FOR IMPRIVATA SOFTWARE

**IMPORTANT-READ CAREFULLY:** Prior to acknowledging your acceptance, be sure to carefully read and understand all of the rights and restrictions described in this Imprivata End-User License Agreement ("Agreement"). This Agreement is a legal agreement between you and Imprivata, Inc. for the Imprivata Software. By installing any Imprivata Software you (either you as an individual or, if the Software will be used by an entity, on behalf of that entity) represent and agree that you have the capacity and authority to bind yourself or, if applicable, the applicable entity, to the terms of this Agreement and agree to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you may not install the Software. This Agreement is effective as of the date you install any Imprivata Software ("Effective Date"). Any terms and conditions in a purchase order (or in any similar document) which are in addition to, or conflict or are inconsistent with these terms are hereby rejected and superseded by the terms contained herein. The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold.

### 1. DEFINITIONS.

"Appliance" means Imprivata virtual (or otherwise emulated) appliance that uses virtual processors.

"Authentication(s)" means a biometric scan which may be used to authenticate an individual as measured by Imprivata's Site Monitor tool. Authentications shall not include biometric scans deemed unusable by Imprivata's Site Monitor tool to identify an individual including partial, unfocused or otherwise unsuitable biometric scans.

"Clinic(s)" means any healthcare facility, external to an inpatient acute care facility, delivering healthcare services that do not contain Licensed Beds.

"Confirm ID" means Imprivata's proprietary secure signing solution for electronic prescribing of controlled substances (EPCS) which includes a comprehensive platform for provider identity proofing, supervised enrollment of credentials, two factor authentication, and auditing.

"Device" means an Imprivata supported mobile or medical device as specified on Imprivata's then-current OneSign or Confirm ID Supported Components guide, respectively. A separate license must be purchased for each device utilizing the Software, regardless of whether the device is actively utilizing the Software at any given time (i.e. the Software is not licensed on a concurrent device basis).

"Identity Governance" means Imprivata's proprietary software for automating the provisioning and de-provisioning of user accounts.

"Imprivata Quote" means the supplemental document issued by Imprivata, which specifies the Imprivata Products and Services and any applicable Third Party Software and/or Hardware to be purchased by you, and the price associated with each.

"Licensed Beds" means each of the beds for you have been

licensed by the State in which the applicable Named Hospital resides.

"Managed Identity" or "Managed Identities" means an employee, independent contractor, consultant, and/or outsourced worker, administrator and service users whose user account is in your directory and other applications managed by Imprivata Identity Governance solution.

"Named Hospital" means each named hospital wholly owned by you or controlled by you containing Licensed Beds as specifically set forth; (i) in the applicable Imprivata Quote or its equivalent if purchasing through an authorized reseller and/or (ii) as indicated in PatientSecure Management Tool (Admin Console). For purposes herein "control" means (i) the power to elect a majority of the directors or similar officers of an entity, or (ii) the power by contract to operate or manage the day-to-day operations of a health care facility.

"Non-Clinical User" is a named individual authorized by you to use the Software purchased (as indicated in the applicable Imprivata Quote or its equivalent if purchasing through an authorized reseller) to provide services for on behalf of you but does not provide healthcare to patients and at no time uses the Software to access your electronic medical record system. A separate license must be purchased for each user who uses the Software, regardless of whether the user is actively using the Software at any given time (i.e. the Software is not licensed on a concurrent user basis).

"OneSign" means any or all of the following Imprivata proprietary secure signing software programs (as applicable): (i) Single Sign On (SSO), (ii) Authentication Management (AM) and (iii) Single Sign On/Authentication Management (SSO/AM).

"OneSign Options" means any or all of the following Imprivata proprietary OneSign option modules: (i) Self Service Password Management Software (SSPW), (ii) Finger Biometric Identification (FBID), (iii) Vasco

Authentication (Vasco), (iv) Proximity Aware, (v) Virtual Desktop Access (VDA) and (vi) Mobile Device Access (MDA).

“PatientSecure” means Imprivata’s proprietary biometric identification management system software program.

“Privileged Access Management” means any or all of the following Imprivata proprietary password management solutions (as applicable): (i) Privileged Access Management (PAM) and (ii) Imprivata Enterprise Password Vault.

“Products” means the Software, the Appliances and Imprivata branded hardware devices, individually or collectively.

“Services” means Support services and/or other purchased professional implementation and training services, as applicable.

“Software” means (i) the object code version of the applicable Imprivata proprietary software product, (ii) all modules, interfaces, updates and enhancements, thereto that are provided to you, (iii) any customized features and functions provided by Imprivata pursuant to this Agreement, and (iv) all printed materials and online or electronic documentation provided to you. The Software may be provided with Third Party Code which interoperates with the Software but which is not a part of the Software and is not licensed hereunder.

“Support” means the services that Imprivata provides to maintain and support the Imprivata Software, which services are further described in Section 11.

“Third Party Code” means the additional third party software included in the Appliance that is licensed directly to you by third parties. To use such additional Third Party Code you must accept any licensing terms separately provided for such Third Party Code. Imprivata warrants that the Appliance, as a whole with the Third Party Code, will comply with the warranties set forth below, and Imprivata’s indemnification obligations set forth below apply to the Appliance as a whole with the Third Party Code.

“Third Party Hardware” means hardware that is proprietary to a third party (excludes Imprivata branded devices).

“User” means a named individual authorized by you to use the Software pursuant to a license of the applicable Software purchased (as indicated in the applicable Imprivata Quote or its equivalent if purchasing through an authorized reseller). A separate license must be purchased

for each user who uses the Software, regardless of whether the user is actively using the Software at any given time (i.e. the Software is not licensed on a concurrent user basis).

**2. LICENSE GRANT.** Subject to your compliance with the terms of this Agreement (including payment of all applicable fees), Imprivata hereby grants to you a limited, non-exclusive, perpetual (excluding term-based licenses), non-transferable, non-sub-licensable license to permit your employees, independent contractors, consultants, and outsourced workers (in each case performing services for you) to access and use the applicable Software license purchased by you (as indicated in the applicable Imprivata Quote or its equivalent if purchasing through an authorized reseller) in object code, provided such use is strictly in accordance with the applicable Software license grant specified below and is solely for your internal business purposes.

(a) **Imprivata OneSign, OneSign Options, & Confirm ID.** The following license grant set forth in this Section 2 (a) shall apply to OneSign, OneSign Options and Confirm ID Software:

Subject to the terms and conditions of this Agreement, Imprivata hereby grants you a license for each User and/or Device license purchased for Imprivata OneSign, OneSign Options and/or Confirm ID Software (as indicated in the applicable Imprivata Quote or its equivalent if purchasing through an authorized reseller) to access and use Imprivata OneSign, OneSign Options and/or Confirm ID as prescribed in this Agreement and the published user documentation. Imprivata OneSign and OneSign Options Software are required to be used in conjunction with an Appliance, have a matching level of Support and OneSign Options may only be used with a supported version of OneSign.

(b) **Imprivata Identity Governance.** The following license grant set forth in this Section 2 (b) shall apply to the Imprivata Identity Governance Software:

Subject to the terms and conditions of this Agreement, Imprivata grants you a license for each Identity Governance User license purchased to access and use Identity Governance to provision your Managed Identity accounts as prescribed in this Agreement and the published user documentation. The license fee for Identity Governance is determined by the total number of Managed Identities at the time of your purchase. You will be required to purchase a User license for each Managed Identity. In the event your number of Managed Identities increases, you shall pay Imprivata additional User license and associated Support fees for all additional Managed Identities, based on Imprivata’s then-current price list at the time of any such

increase.

(c) **Imprivata PatientSecure**. The following license grant set forth in this Section 2 (c) shall apply to the PatientSecure Software:

Subject to the terms and conditions of this Agreement, Imprivata hereby grants you a license to access and use the Imprivata PatientSecure Software for the number of Authentications purchased by you (as indicated in the applicable Imprivata Quote or its equivalent if purchased through an authorized reseller) (the “Authentication Baseline”). An annual license true-up will be conducted by Imprivata prior to the end of each annual term. The license true-up will be conducted by pulling a report of the total number of Authentications used by you during the annual term as measured by Imprivata’s Site Monitor tool. In the event you exceed the Authentication Baseline by ten-percent (10%) or more in an annual term, the parties agree to either: (i) negotiate the fees for such Authentications over the Authentication Baseline in good faith; or (ii) establish a revised Authentication Baseline for the next annual term based on the number of additional Authentications (and you shall remit fees for such revised Authentication Baseline for the next annual term prior to the start of such term). The Imprivata PatientSecure Software is term-based Software subject to the terms of Section 2(d) below. You are required at all times to keep Imprivata’s Site Monitor tool enabled for auditing purposes.

(d) **Imprivata Privileged Access Manager**. The following license grant set forth in this Section 2 (d) shall apply to the Privileged Access Manager Software:

Subject to the terms and conditions of this Agreement, Imprivata hereby grants you a license for each User license purchased for Privileged Access Manager (as indicated in the applicable Imprivata Quote or its equivalent if purchased through an authorized reseller) to access and use Imprivata Privileged Access Manager as prescribed in this Agreement and the published user documentation.

(e) **Imprivata Term-Based Licenses**. If you purchased a term-based Software license (as indicated in the applicable Imprivata Quote or its equivalent if purchased through an authorized reseller) the license terms set forth in 2 (a), 2 (b), 2(c) and/or 2 (d) shall apply (as applicable), provided, however, said term-based Software license shall commence on delivery of the Software and continue for the duration of the license term (as indicated in the applicable Imprivata Quote or its equivalent if purchased through an authorized reseller). At the end of such license term, if the Software license is not renewed by you, then the license for such term-based Software shall terminate. The license key distributed by Imprivata to you for any term-based Software

license is programmed to expire at the end of the applicable license term at which point the term-based Software cannot be accessed or used.

(f) **Imprivata Non-Clinical User Licenses**. If you purchased a Non-Clinical User Software license (as indicated in the applicable Imprivata Quote or its equivalent if purchased through an authorized reseller) the license terms set forth in 2 (a) shall apply (as applicable), provided, however, the Software may only be used by an employee, independent contractor, consultant, or outsourced worker of yours that has a need to use the Software to provide services for on behalf of you but does not provide healthcare to patients and at no time uses the Software to access your electronic medical record system.

(g) **Imprivata Cloud Service**. If you purchased Imprivata Software which utilizes Imprivata’s cloud service (the “Cloud Service”), such Cloud Service is a hosted service offering operated by Imprivata. The Cloud Service provides the following (as applicable):

- i. Authentication using the Imprivata ID mobile application (requires data plan on Users device);
- ii. Authentication using a One Time Password (OTP) delivered via SMS text (requires SMS text plan on User’s device);
- iii. Graphical interface for certain browser based OneSign and Confirm ID authentication log in and administrative console pages;
- iv. Authentication into web applications which are configured with Imprivata as the identity provider;
- v. Individual ID proofing for EPCS;
- vi. EPCS authentication from mobile electronic medical record applications; and
- vii. Authentication using a facial biometric captured using the Imprivata ID mobile application (requires data plan on User’s device).

Subject to the terms of this Agreement and provided you are active on Support and the Cloud Service is then made commercially available by Imprivata, you are granted a nonexclusive, nontransferable, and limited right to allow your Users to access and use the Cloud Service in conjunction with a licensed version of the Imprivata Software utilizing the Cloud Service. Your use of the Cloud Service is solely for your internal business purposes in a manner consistent with the published user documentation. The Imprivata Software which utilizes the Cloud Service requires an active connection to the Internet from your User’s computer or mobile device. Imprivata represents and warrants that it will provide the Cloud Service in all material respects in accordance with the published user documentation. You must notify Imprivata of any deficiencies within 30 days of your first use of the Cloud Services. For any breach of the aforementioned warranty,



your exclusive remedy and Imprivata's entire liability shall be for Imprivata to use commercially reasonable efforts to correct the deficient Cloud Services. Imprivata shall not be liable for the unavailability of the Cloud Service if, and to the extent, such unavailability is due to one or more of the following circumstances:

(i) hostile network attacks;  
(ii) deficiencies caused by the Internet;  
(iii) force majeure events;  
(iv) scheduled or emergency maintenance, provided that written notice of such scheduled maintenance is provided to you by Imprivata.

(h) **SMS Text for Confirm ID for Remote Access.** You will be allotted an unlimited number of SMS texts for the initial twelve (12) months of Remote Access that is included with Confirm ID for Remote Access. After such twelve (12) month period, Imprivata reserves the right to limit the number of free SMS texts allotted to you.

(i) **Restrictions.** You may reproduce one copy of the Software solely for back-up purposes. You may not use the Software to provide timesharing, service bureau, subscription or managed service, hosting, outsourcing, rental or similar services. Except as expressly set forth herein, you may not copy, translate, modify or adapt the Software, or any portion thereof, or incorporate it, in whole or any part, in any other product, create derivative works based on the Software, or any portion thereof, or license others to reproduce any copies of the Software, or any portion thereof, and may not decompile, disassemble or reverse engineer the Software, or any component thereof except as permitted by law, and then only after having previously requested in writing from Imprivata the interoperability information you are attempting to obtain. You will ensure that no proprietary notices affixed to or displayed on the Software will be removed or modified.

(j) **Oracle Disclaimer.** Some of the Software contains software licensed by Imprivata from Oracle America, Inc. ("Oracle"). As to that software, Oracle is a third party beneficiary of this Agreement and, to the extent permitted by applicable law, Oracle disclaims any liability to you for (a) any damages, whether direct, indirect, incidental, or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Software. Notwithstanding Oracle's disclaimer, all such software is Software warranted by Imprivata and subject to Imprivata's indemnity obligations, all as set forth in this Agreement.

(k) **Right to Audit.** At Imprivata's written request not more frequently than once during any 12 month period, you agree that your Chief Financial Officer (or person holding equivalent office) shall provide a written certification to Imprivata of the statement of the total

number of Users, Devices, Managed Identities, Named Hospitals or Clinics using each Imprivata Software product then licensed by you. If you fail to provide such certification within thirty (30) days after Imprivata's request, you consent to Imprivata auditing you to ascertain the number of Users, Named Hospitals or Clinics, as applicable, such audit to be conducted by an independent auditor during your standard business hours and at your expense. If the inspection reveals an underpayment of any license fees, you shall promptly pay to Imprivata the deficit.

**3. LIMITED SOFTWARE WARRANTY.** Imprivata warrants (a) that the Software will conform substantially to Imprivata's published user documentation as of the date of the Software delivery to you for a period of sixty (60) days thereafter and (b) that it will provide any services agreed to between the parties in a good and workmanlike manner consistent with industry standards. This warranty is a limited warranty. It does not apply to (a) Software and other products identified in their product description as being sold or licensed "as-is" or (b) Software and other products identified as "beta" or "pre-release" or the like; all of which are supplied on an "as-is" basis without any warranty of any sort. Imprivata will have no obligation hereunder if the alleged defect is due to (x) causes not within Imprivata's control, including accident, alteration, abuse, misuse or repair not performed by Imprivata or (y) use of the Software other than in accordance with its published specifications. Imprivata's sole liability, and your sole and exclusive remedy, for any breach of the foregoing Software warranty is that Imprivata shall, at its option, repair or replace the Software so that it conforms to the limited warranty set forth above or terminate this Agreement and, refund to you the price paid therefor. For any breach of the foregoing services warranty, Imprivata's sole liability, and your sole and exclusive remedy shall be for Imprivata to re-perform such services, provided you notify Imprivata in writing of any such breach within thirty (30) days after the performance of any nonconforming services.

IMPRIVATA MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AS TO THE SOFTWARE OR THE SERVICES AND ALL OTHER WARRANTIES AS TO QUALITY, CONDITION, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED. The Software is not warranted to be error free. You will have sole responsibility for the adequate protection and backup of your data and/or equipment used with the Software. THIS LIMITED WARRANTY GIVES YOU SPECIFIC RIGHTS. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE, AND COUNTRY TO COUNTRY.

#### 4. PAYMENT & SHIPMENT

(a) Imprivata shall sell to you and you shall purchase from Imprivata the Products and Services as set forth in the applicable Imprivata Quote (or its equivalent if purchasing through an authorized reseller). Imprivata will invoice you for the total purchase price set forth on the Imprivata Quote (or its equivalent if purchasing through an authorized reseller). You will pay invoices within 30 days of each invoice date. All purchases are non-cancellable and non-refundable. Imprivata may withhold shipments and cease providing any services until past-due payments are made. Late payments are subject to a charge of the lesser of 1.5% per month or the maximum allowed by law during such time as any payment is late as well as collection costs, including reasonable collection and attorney's fees. Prices do not include, and you shall be responsible for, all applicable taxes of any kind due in respect of the transactions contemplated by this Agreement, except taxes on Imprivata's net income.

(b) All shipments are Incoterms 2010: FCA, Seller's Factory. Third party authentication devices are Non-Cancelable/Non-Returnable. You shall bear all costs of transportation, shipping, and insurance. Risk of loss and title (except for Software) passes to you upon delivery to the carrier. You represent and warrant to Imprivata that you will not export or import the Products or any portion thereof or any Imprivata confidential information or related technical data in violation of applicable laws or regulations, including without limitation US export restriction laws and regulations relating to sales to nationals or residents of foreign nations, and you agree to indemnify and hold Imprivata harmless from and against claims, losses, costs, or liability due to your breach of this warranty.

#### 5. CONFIDENTIALITY

(a) Each party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to (i) prevent use of the other party's Confidential Information for any purpose other than to carry out its rights and obligations hereunder, and (ii) prevent the disclosure of the other party's Confidential Information other than to its employees or contractors who must have access to such Confidential Information for such party to exercise its rights and perform its obligations hereunder and who each agree to be bound by agreements with a duty of confidentiality no less protective of confidential information than provided herein, and each party shall be responsible to ensure that its employees and consultants comply with the restrictions set forth herein. "Confidential Information" shall mean information furnished or made available directly or indirectly by the disclosing party to the receiving party which (x) is marked confidential,

proprietary, or with a similar designation; (y) in the case of information given orally or visually, is reduced to a written summary marked with an appropriate restrictive legend and delivered to the receiving party within two (2) weeks after it is furnished hereunder or (z) should be reasonably understood by the receiving party to be the confidential or proprietary information of the disclosing party; without limiting the foregoing, the Software and the results of benchmark and other tests run by you and resulting from use of the Software shall be deemed to be Imprivata's Confidential Information.

(b) The parties' obligations set forth in this section shall not apply with respect to any portion of the Confidential Information that: (i) was in the public domain at the time it was communicated to the receiving party; (ii) entered the public domain through no fault of the receiving party; (iii) is rightfully received by the receiving party from a third party without a duty of confidentiality; (iv) is independently developed by the receiving party without use of the Confidential Information; (v) consists of generalized ideas, concepts, know-how or techniques in intangible form that is incidentally retained in the unaided memories of persons who have had authorized access to Confidential Information (provided that this exception shall not be construed to grant to either party a license to the other party's copyrights or patents beyond those otherwise granted in this Agreement); (vi) is disclosed under operation of law, except that the receiving party will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and will, if legally permitted, provide the other party prompt notice of such possible disclosure prior to disclosure in order to allow an opportunity to contest such disclosure; or (vii) is disclosed with the other party's prior written approval.

**6. LIMITATION OF LIABILITY. EXCEPTING ONLY IN THE EVENT OF A BREACH BY YOU OF SECTION 2 ("LICENSE GRANT") OR A BREACH BY EITHER PARTY OF SECTION 5 ("CONFIDENTIALITY"), NEITHER PARTY IS LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS, FORESEEABLE OR UNFORESEEABLE, OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOST OR DAMAGED DATA OR SOFTWARE, LOSS OF USE OF PRODUCTS, OR DOWNTIME) ARISING FROM THE SALE, DELIVERY OR USE OF THE APPLIANCES, PERFORMANCE OF ANY SERVICES OR ANY OTHER ACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IMPRIVATA'S MAXIMUM LIABILITY TO YOU, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING**

NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE FEES PAID AND PAYABLE BY YOU DURING THE PRECEDING TWELVE MONTH PERIOD. MONETARY DAMAGES AS LIMITED BY THIS SECTION SHALL SERVE AS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM UNDER THIS AGREEMENT FOR WHICH AN EXCLUSIVE REMEDY IS NOT PROVIDED, AND AS YOUR SOLE AND EXCLUSIVE ALTERNATIVE REMEDY SHOULD ANY EXCLUSIVE REMEDY HEREUNDER BE FOUND TO FAIL OF ITS ESSENTIAL PURPOSE. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY IS HEREBY INTENDED. The Software may permit the user of the Appliance to record employee information including but not limited to user names, passwords, applications accessed and other information regarding employees' network and corporate information access and usage. You agree to use and safeguard that employee information in accordance with all applicable laws, and Imprivata disclaims any liability for any damages of any kind arising in connection with the use or misuse of that employee information.

#### **7. INTELLECTUAL PROPERTY CLAIMS.**

Imprivata will defend you from and against third party claims (and will pay any resulting damages, costs or liabilities awarded by a court of final jurisdiction) arising solely from a claim that the Software infringes any United States or European Union patent or any copyright rights (in or of countries that are signatories to the Berne Convention) of a third party. Imprivata's obligation is subject to your compliance with the following procedures: (a) you will promptly notify Imprivata in writing of any claim or the commencement of any suit, action, proceeding or threat that you believe will result in losses for which you will be entitled to defense, provided however, that the failure to give such prompt written notice shall not affect the indemnification provided hereunder except to the extent that such failure shall have actually prejudiced Imprivata; (b) you will tender to Imprivata (and its insurer) full authority to defend or settle any such claim; and (c) you shall cooperate in the defense of such claim. Imprivata has no obligation to indemnify you in connection with any settlement made without Imprivata's prior written consent. Imprivata will defend you against any such claim brought against you by counsel retained at Imprivata's own expense and of Imprivata's own choosing. You shall be permitted to monitor the defense of any such claim with counsel of your choosing at your sole cost and expense. Imprivata shall have no obligation to indemnify you for infringement claims arising in whole or in part from (1) designs, specifications or modifications originated or requested by you, (2) the combination of the Software or any part thereof with other equipment, software or products not supplied by Imprivata if such infringement or misappropriation would

not have occurred but for such combination, (3) your failure to install an update, where same would have avoided such claim or (4) Third Party Code used apart from the Appliance. You will indemnify and hold Imprivata harmless from and against claims that are the subject of clauses (1)-(3). In the event that the use or sale of any of the Software is enjoined or, in Imprivata's judgment may be enjoined, Imprivata will either: (i) procure for you the right to continue to use the Software, (ii) replace the infringing portion of the Software with a functionally equivalent product or modify it so that it becomes non-infringing, or (iii) direct you to destroy the Software, including any Software installed on your computers, and return all media and documentation containing the software program documentation or any other materials, copies or reproductions of the foregoing, relating to the Software, and, upon receipt thereof, Imprivata shall reimburse you for (x) the price originally paid by you for any Software licensed on a perpetual license basis, reduced by five year straight line depreciation plus (y) any prepaid fees for term-based Software licenses on a pro-rata basis. Upon Imprivata's fulfillment of the alternatives set out in this section, Imprivata shall be relieved of any further obligation or liability to you as a result of any such infringement or misappropriation. THIS SECTION STATES IMPRIVATA'S ENTIRE LIABILITY TO YOU AND YOUR SOLE REMEDY FOR ANY INFRINGEMENT CLAIMS CONCERNING THE SOFTWARE.

#### **8. TERM AND TERMINATION.**

(a) **Term.** This Agreement shall become effective as of the Effective Date and, unless sooner terminated as set forth below, shall continue until the expiration or termination of the last existing Software term license as such term is specified in your Imprivata Quote (or its equivalent if purchasing through an authorized reseller) ("Agreement Term").

(b) **Termination for Cause.** Either party may terminate this Agreement or any Imprivata Quote by written notice if the other Party: (i) commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach; or (ii) becomes insolvent, commences dissolution proceedings or ceases to operate in the ordinary course of business. In addition, Imprivata may terminate this Agreement or any Imprivata Quote immediately if you breach Section 2 (License Grant) or Section 5 (Confidentiality).

(c) **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement or any Imprivata Quote, by either party, all Software licenses granted to you, and all Services obtained by you, under this Agreement and/or Quote (as applicable) shall terminate and you shall cease using the applicable Software. Upon any

such expiration or termination, you shall promptly remit to Imprivata all unpaid monies due, or to become due, under this Agreement and/or Quote. You agree to destroy all copies of the Software in your possession and provide written notification from an officer of yours to that effect. In addition to those provisions which by their nature are intended to survive any expiration or termination of this Agreement or any individual Imprivata Quote, Section 5 (Confidentiality) and Section 6 (Limitation of Liability) shall specifically survive such expiration or termination.

**9. LICENSED FACILITIES.** The license to use the Software, Hardware and Services (as applicable) and otherwise exercise your license rights hereunder is extended to those majority owned hospitals and healthcare facilities controlled by or under common control with you (each a "Licensed Facility"). You are responsible for the performance of each Licensed Facility in connection with the Licensed Facility's use of the Imprivata Software, Hardware and Services (as applicable), and guarantee each Licensed Facility's full and faithful compliance with the terms of the Agreement. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty percent (50%) of the voting power to elect directors of the hospital and/or healthcare facility, or (ii) greater than fifty percent (50%) of the ownership interest in the hospital and/or healthcare facility. You acknowledge and agree that the number of Users and other metrics, as may be applicable, of each Licensed Facility will be included when measuring license compliance (including incremental license fees, if applicable) under the provisions of this Agreement.

**10. BIOMETRIC AND PERSONAL DATA.** You represent and warrant that you comply with all applicable biometric and privacy laws, rules, regulations and orders and agree that any employee and/or contractor biometric and personal information will be collected, handled, and otherwise processed in accordance with applicable law and your policies, including, but not limited to, obtaining required consent(s) by all employees and/or contractors utilizing the Software. You agree to indemnify and hold Imprivata harmless from and against any and all claims, demands, actions, threatened actions, governmental enforcement proceedings, costs (including reasonable attorneys' fees) liabilities, fines, penalties, and other loss arising or resulting from your breach or alleged breach of this warranty.

**11. EXPORT RESTRICTIONS.** You are solely responsible for complying with applicable export and import regulations, securing any necessary export or import license(s), obtaining local customs clearance and paying all duties, taxes and other charges. You represent and warrant to Imprivata that you will not export the Software or any portion thereof in violation of applicable laws or

regulations. You agree to indemnify and hold Imprivata harmless from and against claims, losses, costs, or liability, arising in connection with your breach of this Section.

**12. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting in part of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein. Contractor/Manufacturer is: Imprivata, Inc., 10 Maguire Road, Lexington, MA 02421- 3120 U.S.A.

**13. SUPPORT.** You may receive Support on an annual basis commencing with shipment of your Software if you are purchasing Imprivata Support from Imprivata or an Imprivata authorized reseller. At the end of the initial year of Support, or any subsequent anniversary thereof, Support shall automatically renew for successive twelve month periods unless you or Imprivata (or its reseller, as applicable) provides the other with written confirmation of non-renewal at least thirty (30) days prior to the expiration of the then applicable annual Support period. Notwithstanding the foregoing, Imprivata (or its reseller, as applicable) shall not terminate Support without cause if Imprivata (or its reseller, as applicable) is then providing Support to other similarly situated customers, provided that Imprivata (or its reseller, as applicable) may, with not less than sixty (60) days' notice, change the Support descriptions or pricing effective at the start of the next annual term hereunder. Imprivata or its reseller will invoice you for the renewal not less than thirty (30) days prior to the end of the then applicable annual Support period; payment will be due as of the commencement of the then applicable annual Support period and Imprivata or its reseller may terminate Support if you fail to make the applicable payment within thirty (30) days thereafter. While you participate in Support, Imprivata will provide you (i) telephone and email based technical support in accordance with the Support level purchased and (ii) all new maintenance releases to the Software when and if available (additional information is available at <https://www.imprivata.com/imprivata-maintenance-and-support>). Imprivata shall not be required to provide Support on any Software (a) for more than twelve months after its general release, or (b) more than one release behind the currently shipping release of the Software. Any software provided to you pursuant to Support shall be provided as Software licensed under the terms of this Agreement. Notwithstanding the foregoing, Support for a term-based Software license is included in the Software license cost and shall commence on delivery of the Software and continue for the duration of the license term.

**14. HIGH RISK ACTIVITIES.** The Appliance is not fault-tolerant and is not developed or intended for use - including evaluation or trial use -in hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, direct life support machines or weapons systems, or any other application in which the failure of the Software could lead to death, personal injury, or severe physical or environmental damages ("High Risk Activities"). Imprivata specifically excludes any express or implied warranty of fitness for High Risk Activities.

**15. EQUITABLE RELIEF.** You agree that, because of the proprietary nature of the Software, Imprivata's remedies at law for a breach by you of your obligations under this Agreement will be inadequate and that Imprivata shall, in the event of a breach or threatened breach, be entitled to equitable relief, including injunctive relief, without the posting of any bond, in addition to all other remedies provided under this Agreement or available at law.

**16. CUSTOMER LIST.** You agree that Imprivata may include your name and logo on its customer lists, including in on-line and printed forms.

#### **17. GENERAL**

(a) This Agreement (and any purchase orders) contains the entire agreement of the parties with respect to the transactions contemplated by this Agreement and supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral. No modification or waiver of any provision hereof is effective unless in writing and signed by each party. Imprivata shall not be subject to any provisions of any pre-printed purchase order, or any of your policies, regulations, rules, or the like, including those set forth in any of your sponsored registration system (collectively, "Policies"), even if such Policies require affirmative acknowledgement from a Imprivata representative.

(b) This Agreement is binding upon and inures to the benefit of the parties, their successors and permitted assigns. Neither party may assign or transfer its rights hereunder without the other party's prior written consent, provided that Imprivata may assign this Agreement in connection with a merger or consolidation or the sale of all or substantially all of its assets or stock.

(c) This Agreement and the rights and obligations of the parties will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts in the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (UCITA) as adopted by any state are specifically excluded from application hereunder.

(d) The failure of either party to enforce any of the terms hereof will not be construed as a waiver of future enforcement of that or any other term. Neither party is responsible for any delays or failure in performance (except for payment of money) due to any cause beyond the party's reasonable control. If any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, now or hereafter be or become invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Section headings used in this Agreement are intended for convenience only and shall not affect the interpretation or construction of this Agreement.

(e) The parties acknowledge that Imprivata is an independent contractor of yours. In no event will Imprivata or any of its employees be deemed a joint venture party, partner, employee, or agent of yours by virtue of this Agreement.

(f) Imprivata may from time to time, prior to or during the term of this Agreement, disclose to you information related to planned future products, features or enhancements. Imprivata's development efforts and plans are subject to change at any time, without notice; Imprivata provides no assurances that Imprivata will introduce any such future products, features or enhancements and assumes no responsibility to introduce such products, features or enhancements. You acknowledge that your current purchasing decisions are not made based on the reliance on any such future timeframes or specifics described to you.

**18. QUESTIONS.** Should you have any questions in regard to this Agreement, please contact Imprivata, Inc., Attention: Legal Department, 20 CityPoint, 6th floor, 480 Totten Pond Rd., Waltham, MA 02451 U.S.A.