



GCloud Services Terms and Conditions

Between

Somerford 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, MS Teams 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
Somerford Commercial			
Somerford 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 client 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 time frame, 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 rates are as per the G-Cloud 15 price list. All prices are quoted exclusive of VAT

Payment

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

Duration

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

Quote

x days of professional services * £x's

Data Processing

Subject Matter of Processing

Personal and Commercially sensitive Data relating to [ADD DETAILS] which Somerford may process in carrying out its legitimate business interests and obligations under this SoW.

Duration of Processing

For the later of Somerford's fulfilment of its obligations to the Customer or termination of this SoW.

Nature of Processing

Collection, and such organisation, adaptation, storage, retrieval, consultation, use, disclosure, making available, restriction, erasure and destruction as is necessary for the fulfilment of this SoW.

Purpose

Carrying out Somerford's legitimate business interests and obligations to the Customer pursuant to this SoW.

Data Subject Types

Customer employees, economic and financial documents, system logs or data provided in confidence by customers for the fulfilment of this SoW.



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.

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



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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).



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“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.



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“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).

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.



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- 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



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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 purchasing 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 purchasing 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 purchasing 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 purchasing 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);



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- 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:

- 0. hostile network attacks;
 - 1. deficiencies caused by the Internet;
 - 2. force majeure events;
 - 3. scheduled or emergency maintenance, provided that written notice of such scheduled maintenance is provided to you by Imprivata.
- b. **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



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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.

- c. **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.
- d. **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.
- e. **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.



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.

Payment & Shipment



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1. 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.
2. 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.

Confidentiality

1. 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.

2. 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.

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.

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



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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.

Term and Termination



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1. **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").
2. **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).
3. **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.

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



End User License Agreement for Imprivata Software

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.

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. To the extent your use of the Products and/or Services includes Personal Data (as defined in the Data Processing Addendum available at <https://www.imprivata.com/uk/data-processing-addendum>), you and Imprivata will comply with such Data Processing Addendum.

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.

U.S. Government Restricted Rights



End User License Agreement for Imprivata Software

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.

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/uk/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



End User License Agreement for Imprivata Software

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.

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.

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.

Customer List

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

General

1. 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



End User License Agreement for Imprivata Software

registration system (collectively, "Policies"), even if such Policies require affirmative acknowledgement from a Imprivata representative.

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.

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.

Imprivata Service Level Agreement

Definitions

“Downtime” means any period when web services to generate and manage a token or to send and receive transactions between Imprivata’s cloud and OneSign Appliances for Imprivata’s cloud enabled products (Confirm ID Remote Access and Electronic Prescription of Controlled Substances, and OneSign – Web SSO) aren’t operational.

“Monthly Uptime Percentage” means the total number of minutes in a calendar month minus the number of minutes of Downtime in a calendar month, divided by the total number of minutes in a calendar month.

“Service Credit” means the number of days of Service to be credited upon renewal to the new term, without charge to Customer, calculated as

Uptime	Days Credited
< 99.9%	5
< 99.5%	10
< 99.0%	15

Credits are allocated based on the maximum available credit up to the annual limit. The limit for service credits is up to 25% of monthly maintenance fees and up to 2% annually.

Customer Must Request Service Credit to receive any of the credits described above within 30 days of becoming eligible from a Service Credit by emailing Imprivata_SLA@imprivata.com. Failure to comply with this requirement forfeits Customer’s right to receive a Service Credit. Customer may check whether Imprivata’s systems are operational at <https://status.imprivata.com/>.

SLA Exclusions

This SLA does not apply to any performance issues caused by:

- “Force Majeure”
- Failures from Customer’s infrastructure or network
- Failure to adhere to any required configuration, supported platforms, acceptable use policies or use of the product in a manner inconsistent with its documentation and support agreements.

Imprivata’s token services rely on third party partners for SMS and we do not guarantee consistent SMS delivery as the partners service or message networks from mobile device providers may experience issues.

Imprivata’s Individual Identity Proofing relies in part on third party partners and we do not guarantee availability for that service.

PLEASE READ THESE CUSTOMER TERMS OF SERVICE CAREFULLY: Prior to acknowledging acceptance, please be sure to carefully read and understand all of the terms, rights, and restrictions described in this Imprivata Master Cloud Services Agreement (this “Agreement”). This Agreement is a legal agreement between the entity identified in the applicable Order Form as the customer (“Customer”) and Imprivata, Inc. (“Imprivata”) for the Services (as defined below). Customer and Imprivata may be referred to in this Agreement individually as a “party” or jointly as the “parties”. IMPRIVATA PROVIDES THE SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY OPENING, INDICATING ASSENT ELECTRONICALLY, OR DOWNLOADING, INSTALLING, COPYING, OR USING THE SERVICES, THE CUSTOMER AGREES TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES THAT THE CUSTOMER IS LEGALLY BOUND BY THESE TERMS. IF CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, THEN THE INDIVIDUAL ACCEPTING THESE TERMS HEREBY REPRESENTS AND WARRANTS THAT THEY HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO THESE TERMS. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT CONTINUE DOWNLOADING, INSTALLING, COPYING OR USING THE SERVICES.

This Agreement, together with the applicable appendices referenced below, and the applicable Order Form governs Customer’s use of the Imprivata Services.

Appendices	Description
Cloud Services	
Customer Connect	Subscription purchases of Customer Connect are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/customer-connect
Enterprise Access	Subscription purchases of Enterprise Access are also subject to the product specific terms found

Appendices	Description
FairWarning	at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/enterprise-access Subscription purchases of FairWarning are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/fairwarning
GroundControl	Subscription purchases of GroundControl are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/groundcontrol
Biometric Patient Identity	Subscription purchases of Biometric Patient Identity are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/biometric-patient-identity
Access Intelligence Platform	Subscription purchases of Access Intelligence Platform are also subject to the product specific terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/access-intelligence
Managed Services	
Managed Services	Managed Services purchases are also subject to the Managed Services terms found at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/managed-services
Support	
Maintenance and Support	Subscription purchases of Imprivata's Cloud Services include maintenance and support as further described at https://www.imprivata.com/uk/imprivata-master-cloud-service-s-agreement/maintenance-and-support

Appendices	Description
Hardware	Hardware purchases are subject to the terms found at https://www.imprivata.com/uk/imprivata-master-cloud-services-agreement/hardware

Definitions

The following terms shall have the following meanings:

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Cloud Service(s)" means the applicable Imprivata web-based applications, tools and platforms purchased by Customer as set forth on an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as further described in the applicable appendices.

"Confidential Information" means information furnished or made available directly or indirectly by the disclosing party to the receiving party which (i) is marked or clearly indicated to be confidential, proprietary, or with a similar designation; or (ii) a reasonable person would understand the information was confidential or proprietary information. Confidential Information shall not include Personal Data, which shall be governed by the Data Processing Appendix as set forth below, or protected health information, which shall be governed by a Business Associate Agreement as set forth below.

"Customer Data" means information that Customer transmitted, or that was transmitted on Customer's behalf, to or through the Cloud Services, or that Customer stores, or displays within the Cloud Service, or that is otherwise used or processed in connection with Customer's Cloud Services account. For the avoidance of doubt, Customer Data does not include Usage Data or any other information reflecting the access or use of the Services by or on behalf of Customer.

"Documentation" means Imprivata's standard online user guides, documentation, product specifications, and training materials related to use of the applicable Cloud Services (excluding marketing materials), as updated from time to time and made available by Imprivata.



“Force Majeure Event” means an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party.

“Hardware” means Imprivata branded hardware devices purchased by Customer as set forth on an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as further described in the Hardware Appendix.

“Imprivata Order Form” or “Order Form” means the quote or other supplemental document (as applicable) issued by Imprivata, which specifies the Services, and/or Hardware to be purchased by Customer, and the price associated with each.

“Imprivata Materials” means the Services, Documentation, and Imprivata systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Imprivata in connection with the Services or otherwise comprise or relate to the Services or Imprivata systems. For the avoidance of doubt, Imprivata Materials include Usage Data and any information, data, or other content derived from Imprivata’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“Managed Services” means the applicable managed services to implement and operate the Cloud Services on behalf of Customer purchased under an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as described in the Managed Services appendix.

“Personal Data” shall have the meaning as defined in the Data Processing Appendix.

“Professional Services” means any installation, migration or implementation services, and any additional consultancy or professional services purchased under an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) and as described in a Statement of Work (“SOW”).

“Services” means, collectively, the Cloud Services, Managed Services, and Professional Services.

“Subscription Term” means the duration of Customer’s subscription to the applicable Cloud Services and Managed Services as set forth in the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller).

“Support” means the services that Imprivata provides to maintain and support the Imprivata Cloud Services, which services are further described in the Maintenance and Support Appendix.

“User” means an individual authorized by Customer to use the Cloud Services pursuant to a subscription of the applicable Cloud Services purchased (as indicated in the applicable Imprivata Order Form or its equivalent if purchasing through an authorized reseller).

Use of the Services

- 1. Access to Cloud Services. Subject to the terms and conditions of this Agreement and Customer’s payment of the applicable fees, Imprivata will permit Customer, during the Subscription Term, to: (i) access and use the Cloud Services solely for Customer’s internal business purposes; and (ii) provide Users access and use of the Cloud Services solely for the benefit of Customer and the operation of Customer’s business and in compliance with this Agreement. Customer is solely responsible for provisioning Users on the Cloud Services, as applicable, including: (a) methods of authenticating Users; (b) restricting access by User or group; (c) managing administrator privileges; (d) deauthorizing Customer personnel who no longer need access to the Cloud Services; and (e) maintaining security and confidentiality of User credentials. As between Customer and Imprivata, Customer is solely responsible for all activity that occurs under its User accounts. Imprivata reserves the right, in its sole discretion, to make any changes to the Cloud Services and applicable Documentation that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Imprivata’s services to its customers; (ii) the competitive strength of or market for Imprivata services; or (iii) the Cloud Services’ cost efficiency or performance; or (b) to comply with applicable law.**



- 2. Affiliates.** Customer may provide access and use of the applicable Cloud Services to Customer's Affiliate's Users or allow them to receive such Cloud Services purchased under an applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller); provided that, Customer is responsible for ensuring that each Affiliate's use of such Cloud Services is in full compliance with the terms of the Agreement. Customer and each Affiliate shall be jointly and severally liable for all claims and liabilities arising under this Agreement related to the Cloud Services. Customer acknowledges and agrees that the usage of each Affiliate will be included when measuring usage and subscription compliance (including incremental subscription fees, if applicable). By executing an Imprivata Order Form (or its equivalent if purchasing through an authorized reseller) hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- 3. Customer Responsibilities.** Customer will (a) ensure all Users comply with this Agreement and all Imprivata Order Forms (or its equivalent if purchasing through an authorized reseller), (b) use commercially reasonable efforts to prevent unauthorized access to or use of Cloud Services, and notify Imprivata promptly of any such unauthorized access or use, (c) use Cloud Services only in accordance with the Documentation and applicable laws and government regulations, (d) be responsible for the Customer systems through which the Cloud Services are accessed; (e) be responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Data, including any viruses, Trojan horses, worms or other harmful programming routines contained in Customer Data; (f) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data and provided Customer Data to Imprivata, (g) be responsible for providing all required notices and obtaining all required consent(s) from both individuals and entities for its and its Affiliates' provision of Customer Data to Imprivata, including for transferring Customer Data from one state, province, country, or locality to another at Customer's or its Affiliates' request and any resulting legal effects of such transfers, and (h) comply with terms of service of non-Imprivata applications with which Customer uses Cloud



Services. The Cloud Services do not replace the need for Customer to maintain regular back-up procedures with respect to Customer Data. Customer must in a timely manner supply the information, materials, and data Imprivata reasonably requires to provide the Services. Imprivata will have no responsibility for delays that result from the failure of Customer to provide such required information, materials, and data or for Customer's failure to cooperate in the performance of Services as reasonably requested. Customer is responsible for selecting and configuring the Services it deems necessary to obtain the results desired or comply with laws applicable to Customer as determined by Customer. The Services may include recommendations or guidance which must be evaluated by Customer.

- 4. Usage Restrictions. Customer is not granted a license to any intellectual property rights under this Agreement. The Imprivata Materials are protected by intellectual property laws, are the property of Imprivata or its licensors (if any), and Imprivata retains all ownership rights to them. Customer shall access and use the Imprivata Materials solely for its intended purpose as described in the Documentation. Any other use is strictly prohibited. Customer will not (a) make any Cloud Service or the Documentation available to any third party (other than Users in accordance with this Agreement), or use any Cloud Service or the Documentation for the benefit of anyone other than Customer or its Users, (b) sell, resell, sublicense, distribute, rent or lease any Cloud Service or any portion thereof, including the Documentation, or include any Cloud Service in a service bureau, time sharing or outsourcing offering; (c) interfere with or disrupt the integrity or performance of any Cloud Service or third-party data contained therein, (d) attempt to gain unauthorized access to any Cloud Service or its related systems or networks, (e) copy a Cloud Service or any part, feature, function or user interface thereof, (f) access any Cloud Service in order to build a competitive product or service, (g) reverse engineer any Cloud Service, in whole or in part, nor use any methods to gain access to the source code or infrastructure of the Cloud Service, in whole or in part, or (h) perform any benchmarking, security, or penetration testing on any Cloud Service, or any portion thereof, or Imprivata's performance of the Cloud Service. Customer will use commercially reasonable measures to ensure**



Customer's use of the Cloud Services do not store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses. Customer shall not provide any competitor of Imprivata (including any employee or contractor of such competitor) with access to or use of the Cloud Services, including by read-only access, direct access through a User identification and password information, or otherwise.

- 5. Professional Services.** In the event Customer purchases Professional Services to be performed by Imprivata, Customer must sign an SOW detailing the project specifications for such services. Unless otherwise agreed in writing, any unused Professional Services will expire one year from the date of the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller), at which point Imprivata will be under no obligation to perform any additional services under the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller). Notwithstanding the foregoing, no credit/refund will be issued for any unused Professional Services under any circumstances. Imprivata shall retain all intellectual property rights in and to anything developed by Imprivata in connection with the SOW. Customer agrees that no proprietary materials created in connection with this Agreement are "works made for hire" as that term is used in connection with the U.S. Copyright Act. Imprivata grants the Customer a non-exclusive, non-transferable, royalty-free license to use anything expressly identified as a deliverable under the SOW to the extent necessary to enable Customer to make reasonable use of the Services and resulting deliverables. Any agreement made verbally or via any other means outside of the contents of a SOW is not binding and Imprivata is under no obligation to provide those services.
- 6. Managed Services.** In the event Customer purchases Managed Services to be performed by Imprivata, the specifications for such services shall be as set forth in the Managed Services Appendix or the applicable SOW.
- 7. Support.** Imprivata shall provide Support as further described in the Maintenance and Support Appendix. Support is included in the Cloud Service subscription cost and shall commence on delivery of the Cloud Service purchased under the applicable Imprivata Order Form (or its



equivalent if purchasing through an authorized reseller) and continue for the duration of the Subscription Term. Imprivata will provide support for Hardware as further described in the Hardware Appendix.

8. **Right to Audit.** Customer consents to Imprivata auditing it to ascertain Customer's compliance with this Agreement, including the number of Users, Affiliates and any other applicable metric used in pricing, such audit to be conducted by Imprivata or an independent auditor during Customer's standard business hours and at Customer's expense. If the inspection reveals an underpayment of any subscription fees, Customer shall promptly pay to Imprivata the deficit.
9. **High Risk Activities.** The Cloud Service 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 Cloud Services 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.

Export Controls and Economic Sanctions

Customer agrees to comply with all applicable export laws and regulations, including but not limited to: (1) the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security; and (2) the trade and economic sanctions maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control. Customer shall be responsible for compliance with such laws and regulations and will obtain any required licenses and other permissions for Hardware and Services ordered pursuant to this Agreement or otherwise received from Imprivata. Without limitation of the foregoing, Customer shall not export, re-export, release, or transfer, whether directly or indirectly, the Services, Hardware, or any part thereof (1) to any country or region subject to comprehensive economic sanctions (i.e., currently Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine), including any person or entity in any such country or region and government or government instrumentalities, wherever located,



of any such country or region; or (2) to individuals or organizations, including Customer, listed on: the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List; the U.S. Department of the Treasury's list of Specially Designated Nationals and Blocked Persons or Consolidated Sanctions List; or any other list of parties proscribed by the U.S. Government. Customer shall not export, re-export, release, or transfer the Services, Hardware, or any part thereof, including technical data and services, to any party, if Customer knows or has reason to know that the products, data, or services (1) are intended, entirely or in part, for a "military-intelligence end use" or a "military-intelligence end user" (as those terms are defined under 15 C.F.R. § 744.22) in Burma, Cambodia, China (including Hong Kong), Russia, or Venezuela; or (2) will be used for activities related to: (i) nuclear proliferation; (ii) chemical or biological weapons; or (iii) missile proliferation (including drone/unmanned aerial vehicles capable of 300 km or longer range). Upon request from Imprivata, Customer agrees to certify compliance with these terms and provide information sufficient to verify such compliance. Customer shall indemnify and defend Imprivata from and against any loss, cost, damages, or expenses of any kind resulting from any third-party claim (including any government investigation) alleging any failure by Customer, its employees, or agents to act in accordance with this section.

U.S. Government Restricted Rights [Copy anchor link: U.S. Government Restricted Rights](#)

The Cloud Services and any firmware installed on Hardware 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 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Cloud Services with only those rights set forth herein. Contractor/Manufacturer is: Imprivata, Inc., 20 CityPoint, 6th floor, 480 Totten Pond Rd., Waltham, MA 02451 U.S.A.

Payment and Shipping

1. **Payment.** Imprivata will invoice Customer for the fees set forth on the applicable Imprivata Order Form. Customer will pay invoices within 30 days of each invoice date. All purchases of the Services and Hardware



are non-cancellable and non-refundable except as explicitly set forth otherwise in this Agreement.

2. **Payment Dispute.** If there is a reasonable, good-faith dispute as to any of the fees owed to Imprivata by Customer in any invoice, then Customer may withhold disputed fees provided that Customer: (i) pay any undisputed fees contained in said invoice; (ii) deliver written notice of fees disputed to Imprivata within thirty (30) days of the invoice date, and (iii) enter into good faith negotiations to resolve the remaining dispute. In the event the parties are unable to resolve such dispute within ninety (90) days of entering into negotiations, then Imprivata may suspend the Services or terminate this Agreement upon fifteen (15) days advanced written notice thereafter. This paragraph shall not apply to any other dispute between the parties.
3. **Suspension of Service.** If any undisputed fees owed by Customer under this Agreement are thirty (30) or more days overdue, Imprivata may, without limiting its other rights and remedies, (a) make late payments 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; and/or (b) suspend the Services to Customer until such fees are paid in full.
4. **Taxes.** Imprivata's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, hosting, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Imprivata has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Imprivata will invoice Customer and Customer will pay that fee unless Customer provides Imprivata with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Imprivata is solely responsible for taxes assessable against Imprivata based on its income, property and employees.
5. **Shipping.** All shipments are Incoterms 2010: FCA, Seller's Factory. Third party authentication devices are Non-Cancelable/Non-Returnable.



Customer 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. Customer represents and warrants to Imprivata that it will not export or import the Services 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 Customer agrees to indemnify and hold Imprivata harmless from and against claims, losses, costs, or liability due to its breach of this warranty.

Term and Termination

- 1. Term.** This Agreement commences on the execution or acceptance by Customer of the first Order Form (or its equivalent if purchasing through an authorized reseller) and, unless terminated as set forth below, shall continue until the expiration or termination of the last existing Subscription Term. The length of Subscription Terms shall be specified in the applicable Imprivata Order Form (or its equivalent if purchasing through an authorized reseller).
- 2. Termination for Cause.** Either party may terminate this Agreement, applicable SOW and/or applicable Imprivata Order Form 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 specifying such breach in reasonable detail; 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 Order Form immediately if Customer breaches Section 2.4 (Usage Restrictions).
- 3. Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, SOW or Imprivata Order Form, by either party, all Services obtained by Customer, under this Agreement, SOW and/or Imprivata Order Form (as applicable) shall terminate, and Customer shall cease using the applicable Cloud Services and Imprivata will cease providing Managed Services and Professional Services. Upon any such expiration or termination, Customer shall promptly remit to Imprivata all unpaid fees due, or to become due, under this Agreement, SOW and/or

Imprivata Order Form (as applicable). In addition to those provisions which by their nature are intended to survive any expiration or termination of this Agreement or any individual Imprivata Order Form, Section 8 (Confidentiality) and Section 11 (Limitation of Liability) shall specifically survive such expiration or termination.

Data

- 1. Usage Data.** Imprivata shall own all rights, title, and interests in and to the aggregated de-identified and/or anonymized data derived from or generated from Customer's and its Users' use of the Services that do not specifically identify Customer or an individual, including all usage statistics, analytic data, benchmarking data and data that relates to the performance or functionality of the Services ("Usage Data"). For greater certainty, the parties acknowledge that Usage Data shall not be considered part of Customer Data and that Imprivata shall own all rights, title, and interests in and to products and services, including modifications or improvements to existing products and services, derived from Usage Data. Imprivata agrees that all uses of Usage Data shall be in accordance with applicable law.
- 2. Customer Data.** Customer grants Imprivata and its Affiliates a license to use, host, copy, transmit, and display Customer Data during the term of this Agreement solely as necessary or useful for Imprivata to provide, update, and enable functionality of the Services. Imprivata agrees that all uses of Customer Data shall be in accordance with applicable law and is for Imprivata's internal business purposes only, subject to the confidentiality obligations set forth herein. Imprivata does not sell, as such is defined in certain applicable laws, Customer Data to any third party. Subject to the limited licenses granted herein, Imprivata acquires no right, title or interest from Customer or its licensors under this Agreement in or to Customer Data.
- 3. Biometric Information.** Customer agrees that as between Customer and Imprivata, Customer is the party that captures, enrolls, or otherwise collects the biometric information processed in connection with the Agreement, and Customer represents and warrants that it complies, and will comply, with all laws, rules, regulations, and orders applicable to the processing of such information under the Agreement, including all

applicable biometric and privacy laws and regulations. Customer represents and warrants that it will provide all required notices and obtain all required consent(s) and/or written release(s) from any individuals from whom biometric information is collected in connection with Customer's use of the Cloud Services. Applicable Cloud Services may have consent workflows enabled to fulfill any separate and distinct duty Imprivata may have. Such prompts and collection of consent shall not be understood, interpreted, or construed to relieve Customer of its own duties. Customer agrees to indemnify and hold Imprivata harmless from and against any and all third-party claims, demands, actions, threatened actions, governmental enforcement proceedings, costs (including reasonable attorneys' fees) liabilities, fines, penalties, and other loss arising or resulting from Customer's breach or alleged breach of the warranties in this Section 7.3. Any such indemnification obligations shall be in accordance with the procedures set forth in Section 10. For the purpose of this Section 7.3, "biometric information" means information defined as biometric information under applicable laws, including without limitation, a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.

4. **Protection of Personal Data.** To the extent that Imprivata processes Personal Data in connection with the Services, the parties agree to comply with the Data Processing Addendum ("DPA") found at <https://www.imprivata.com/uk/data-processing-addendum>, which is incorporated herein by reference, unless the parties have executed a DPA, in which case such agreement shall govern. The DPA describes how Imprivata will handle Personal Data on Customer's behalf in connection with the Services provided under this Agreement. For the sake of clarity, the EU-U.S. Data Privacy Framework, UK Extension to the EU-U.S. DPF, and Swiss-U.S. DPF (collectively, the "DPF") shall govern third country data transfers. In the event that the DPF does not apply, reliance shall shift to the DPA, inclusive of the Standard Contractual Clauses.
5. **Regional Data Hosting.** Imprivata can store Customer Data in a specific location or geographical region where Imprivata does business (e.g., North America or Europe) as part of Customer's subscription subject to the terms of this Agreement.

6. **Transfers of Customer Data for Support.** Imprivata and its Affiliates may utilize personnel (including subcontractors) to meet its obligations under this Agreement related to the Services. Examples include, but are not limited to, troubleshooting, support, engineering resources, etc. Customer acknowledges that Confidential Information (if provided by the Customer in screenshots and/or log files) could be accessed and viewed by offshore personnel in the provision of the aforementioned support. Imprivata shall ensure that any such personnel abide by the terms of this Agreement. Notwithstanding the foregoing, Customer shall not share with or transfer to Imprivata (e.g., via use of the Services, or through screen-sharing or transmitting screenshots in the course of support and maintenance) Special Categories of Data or Sensitive Data (as such are defined in the DPA) or other data that imposes specific data security or data protection obligations on Imprivata in addition to or different from those specified in the Documentation or which are not already provided as part of the Services without Imprivata's prior written consent.
7. **Business Associate Agreement.** To the extent applicable to the Services provided to Customer, Imprivata agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (PL 104-91), the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009 (PL 111-5) and regulations enacted by the United States Department of Health and Human Services at 45 C.F.R. Parts 160 – 164 solely as it relates to the performance of Imprivata's obligations hereunder. The parties agree to comply with the provisions of the Business Associate Agreement found at <https://www.imprivata.com/uk/business-associate-agreement>, which is incorporated herein by reference, unless the parties have executed a Business Associate Agreement, in which case such agreement shall govern. In the event of conflict between the Business Associate Agreement and any provision of this Agreement, the terms of the Business Associate Agreement shall control.

Confidentiality

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. 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; or (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). If the receiving party is legally required to disclose any of the disclosing party's Confidential Information, then it may do so provided that the receiving party (i) provides prompt written notice to the disclosing party (to the extent permitted by law), (ii) provides all reasonably requested assistance in attempting to limit the scope of the disclosure, and (iii) only discloses Confidential Information to the extent actually required by law.

Warranties

- 1. Imprivata warrants that the Cloud Services will conform substantially to Imprivata's Documentation during the Subscription Term. This warranty is a limited warranty. It does not apply to (a) Cloud Services and other products identified in their product description as being sold or licensed "as-is" or (b) Cloud Services 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 kind. Imprivata will have no obligation hereunder if the alleged defect is due to (x) causes not within**



Imprivata's reasonable control, including accident, alteration, abuse, or misuse or (y) use of the Cloud Services other than in accordance with the Documentation. IMPRIVATA'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY BREACH OF THE FOREGOING CLOUD SERVICES WARRANTY IS THAT IMPRIVATA SHALL, AT ITS OPTION, REPAIR OR REPLACE THE CLOUD SERVICES SO THAT IT CONFORMS TO THE LIMITED WARRANTY SET FORTH ABOVE OR TERMINATE THIS AGREEMENT AND, REFUND TO CUSTOMER THE PRICE PAID FOR THE REMAINDER OF THE THEN-CURRENT SUBSCRIPTION TERM.

- 2. Imprivata warrants that it will provide any Professional Services and Managed Services in a good and workmanlike manner consistent with industry standards. THIS WARRANTY IS A LIMITED WARRANTY. FOR ANY BREACH OF THE FOREGOING WARRANTY, IMPRIVATA'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR IMPRIVATA TO RE-PERFORM SUCH SERVICES. Customer must notify Imprivata in writing of any such breach within thirty (30) days after the performance of the applicable Services.**
- 3. IMPRIVATA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE SPECIFIED IN THIS SECTION 9 AND ALL OTHER REPRESENTATIONS OR WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) ARE EXPRESSLY DISCLAIMED, INCLUDING THOSE WARRANTIES AS TO QUALITY, CONDITION, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, IMPRIVATA DOES NOT WARRANT (I) THAT THE SERVICES OR THE DOCUMENTATION WILL BE FREE FROM ANY INTERRUPTIONS, DELAYS, INACCURACIES, SERVER DOWN-TIME, ERRORS, OR OMISSIONS, (II) THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING THE SERVICES OR USING THE DOCUMENTATION, (III) THE SERVICES OR DOCUMENTATION WILL MEET CUSTOMER'S REQUIREMENTS, OR (IV) USE OF THE SERVICES OTHER THAN AS PERMITTED IN THIS AGREEMENT OR THE DOCUMENTATION. THE CLOUD SERVICES ARE A MONITORING AND/OR ADMINISTRATIVE TOOL DESIGNED TO ENABLE CUSTOMER IN THE MANAGEMENT OF CUSTOMER'S BUSINESS OPERATIONS. IMPRIVATA DOES NOT PROVIDE**



LEGAL OR SECURITY ADVICE AND DISCLAIMS RESPONSIBILITY FOR ANY SERVICES CUSTOMER INTERPRETS AS SUCH. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE OF THE SERVICES OR DOCUMENTATION NOT CONTAINED IN THIS AGREEMENT, OR RECOMMENDATIONS MADE AS PART OF OR IN CONNECTION WITH THE SERVICES, SHALL BE DEEMED TO BE A WARRANTY, CONDITION, REPRESENTATION, OR GUARANTEE BY IMPRIVATA. Customer will have sole responsibility for the adequate protection and backup of Customer's data and/or equipment. Imprivata is not responsible for restoring lost data or damage to Customer Data that results from Customer's actions. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE, AND COUNTRY TO COUNTRY.

Indemnification

- 1. Indemnification by Imprivata. Imprivata will defend Customer from and against third party claims (and will pay any resulting judgements awarded by a court of final jurisdiction or settlements entered into in accordance with Section 10.3 below) arising solely from a claim that the Cloud Services as provided by Imprivata infringe 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 Customer's compliance with the procedures set forth in Section 10.3. Notwithstanding anything to the contrary herein, Imprivata shall have no obligation to indemnify Customer for infringement claims arising in whole or in part from: (1) designs, processes, specifications or modifications originated or requested by Customer; (2) the combination of the Cloud Services or any part thereof with other equipment, software, process, or products not supplied by Imprivata if such infringement or misappropriation would not have occurred but for such combination; (3) Customer's failure to install an update, where same would have avoided such claim or (4) Customer's use of the Imprivata Materials in violation of Section 2.4. Customer 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 Cloud Services is enjoined or, in Imprivata's judgment may become**

subject to a claim of infringement, Imprivata may: (i) procure for Customer the right to continue to use the Cloud Services, (ii) replace the infringing portion of the Cloud Services with a materially functionally equivalent product or modify it to address any potential infringement, or (iii) remove Customer's access to the Cloud Services and reimburse Customer for any prepaid fees for the remainder of the applicable Cloud Services Subscription Term on a pro-rata basis. THIS SECTION STATES IMPRIVATA'S ENTIRE LIABILITY TO CUSTOMER AND CUSTOMER'S SOLE REMEDY FOR ANY INFRINGEMENT CLAIMS CONCERNING THE CLOUD SERVICES.

2. **Indemnification by Customer.** Customer will defend Imprivata against any claim, demand, suit or proceeding made or brought against Imprivata by a third party (a) alleging Customer's unauthorized use of the Cloud Services infringes or misappropriates such third party's intellectual property rights, or (b) alleging that Customer Data or Customer's use of Customer Data with the Cloud Services violates applicable law or regulation (each a "Claim Against Imprivata"), and will indemnify Imprivata from any damages, attorney fees and costs finally awarded against Imprivata as a result of, or for any fees paid by Imprivata under a court-approved settlement of, a Claim Against Imprivata. Customer's obligation is subject to Imprivata's compliance with the procedures set forth in Section 10.3.
3. **Indemnification Procedure.** If a party (the "Indemnified Party") becomes aware of any matter for which it has a right to indemnity under this Agreement (each an "Action"), the Indemnified Party will promptly notify the other Party (the "Indemnifying Party") in writing of such Action, provided however, that the failure to promptly notify shall not affect the obligations of the Indemnifying Party except to the extent that such failure actually prejudiced the Indemnifying Party. The Indemnified party will grant sole control over the defense and settlement of the Action to the Indemnifying Party (and its insurer, if applicable), and cooperate in the defense of such Action at the Indemnifying Party's expense as reasonably requested. The Indemnifying Party has no obligation to indemnify the Indemnified Party in connection with any settlement made without the Indemnifying Party's prior written consent. The



Indemnified Party shall be permitted to monitor the defense of any such Action with counsel of its choosing at its sole cost and expense.

Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, LOSS OF DATA, OR LOST PROFITS DAMAGES OF ANY KIND (INCLUDING ANY LOST REVENUE, PROFITS, SAVINGS, BUSINESS OPPORTUNITIES, USE, OR GOODWILL) HOWEVER ARISING, REGARDLESS OF WHETHER SUCH DAMAGES ARE FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF IMPRIVATA EXCEED THE FEES PAID AND PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE PRECEDING TWELVE-MONTH PERIOD FOR THE APPLICABLE CLOUD SERVICE GIVING RISE TO THE LIABILITY CLAIM(S). MONETARY DAMAGES AS LIMITED BY THIS SECTION SHALL SERVE AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT FOR WHICH AN EXCLUSIVE REMEDY IS NOT PROVIDED, AND AS CUSTOMER'S SOLE AND EXCLUSIVE ALTERNATIVE REMEDY SHOULD ANY EXCLUSIVE REMEDY HEREUNDER BE FOUND TO FAIL OF ITS ESSENTIAL PURPOSE.

Customer List

Customer agrees that Imprivata may include Customer's name and logo on its customer lists, including in on-line and printed forms.

Force Majeure

Neither party is responsible for any delays or failure in performance (except for payment of fees owed) to the extent that such failure is due to a Force Majeure Event. Both parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures.

Governing Law

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT



REGARD FOR PRINCIPLES OF CONFLICT OF LAWS. EACH PARTY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION AND FORUM OF THE STATE AND FEDERAL COURTS IN THE COMMONWEALTH OF MASSACHUSETTS IN ALL QUESTIONS AND CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER. 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.

Equitable Relief

The parties agree that, because of the proprietary nature of their respective Confidential Information (including the Cloud Services in Imprivata's case), legal remedies due to a party's breach of its obligations under this Agreement may be inadequate and that in the event of a breach or threatened breach, a party may be entitled to seek 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.

Assignment

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, corporate reorganization, consolidation, or the sale of all or substantially all of its assets or equity.

Entire Agreement

This Agreement and the appendices attached hereto (and any Imprivata Order Forms) contains the entire agreement of the parties with respect to the subject matter contemplated by this Agreement and supersedes all prior and contemporaneous agreements, representations and understandings, whether written or oral with respect to such subject matter. 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 Customer's policies, regulations, rules, or the like, including those set forth in any of Customer's sponsored registration system

(collectively, “Policies”), even if such Policies require affirmative acknowledgement from a Imprivata representative.

Severability

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.

Independent Contractors

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries under this Agreement.

Future Products

Imprivata may from time to time, prior to or during the term of this Agreement, disclose to Customer 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. Customer acknowledges that its current purchasing decisions are not made based on the reliance on any such future timeframes or specifics described to Customer.

Evaluation, Trial or Beta Cloud Services[Copy anchor link: Evaluation, Trial or Beta Cloud Services](#)

Imprivata may offer certain Cloud Services to Customer for evaluation, trial or beta purposes (“Trial Services”). In such event, Imprivata grants to Customer a nonexclusive, limited, royalty-free, nontransferable right to use the Trial Services solely for Customer’s internal evaluation purposes during the period designated by Imprivata on the Order Form (or if not designated, 30 days). Notwithstanding any other provision contained herein, such Trial Services are



provided to Customer “as is” without indemnification, support, service level agreement, or warranty of any kind, express or implied. Imprivata assumes no liability arising out of or in connection with Customer’s use of such Trial Services and shall not be liable for any direct, indirect, special, incidental, consequential, or punitive damages of any kind, except with respect to losses that cannot be legally limited or excluded under law, related to Customer’s use of the Trial Services. Except to the extent the terms in this Section conflict with the terms set forth in this Agreement, all other terms of this Agreement shall apply to the Trial Services.

Applicable Laws

Imprivata shall comply with all applicable laws to the extent that such laws by their terms are expressly applicable to Imprivata’s delivery of the Services under this Agreement and impose obligations upon Imprivata in its role as a software and services provider with respect to the Services provided under this Agreement. Customer shall comply with all applicable laws to the extent that such laws by their terms, are expressly applicable to Customer’s use and receipt of the Services under this Agreement and impose obligations upon Customer with respect to the Services provided under this Agreement. Customer is solely responsible for determining whether the Services enable Customer to comply with laws applicable to Customer.

No Waiver

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party’s right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument. This Agreement may be executed by facsimile or by electronic transmission of a pdf file.



Notice

Except as may be otherwise set forth herein, all notices, requests, demands and other communications hereunder will be in writing (email acceptable) and will be deemed to have been duly given: (i) on the next day if delivered personally or electronically to such party; (ii) on the date three (3) days after mailing if mailed by registered or certified mail; or (iii) on the next day if delivered by courier. All notices to Imprivata shall be sent to the following address: Imprivata, Inc., Attn: Legal Department, 20 CityPoint 480 Totten Pond Road, 6th Floor, Waltham, MA 02451 or dept.legal@IMPRIVATA.com. Customer may designate in writing the relevant contact to which all notices shall be addressed.