

INVICTI SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement ("**Agreement**") is made as of the Date set forth in the Purchase Order, Statement of Work, or similar document ("**Effective Date**"), between Invicti Security Corp., a company duly incorporated in Florida, with its registered office at 7171 Southwest Parkway, Fourth Floor Building 300, Austin, Texas 78735 ("**Invicti**") and Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("**Customer**").

1. Definitions.

1.1 "**Affiliates**" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 "**Customer Data**" means data, files, or information, including data, files, or information that include Personal Data, accessed, used, communicated, stored, or submitted by Customer or Customer's Users use of the Invicti Solution.

1.3 "**Documentation**" means the operating instructions, user manuals, product specifications, "read-me" files, and other documentation that Invicti makes available to Customer in hard copy or electronic form for the Invicti Solution, including any modified, updated, or enhanced versions of such documentation.

1.4 "**Intellectual Property Rights**" means all intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

1.5 "**Invicti Solution**" means Invicti's proprietary web application security scanning software programs made available to Customer as the Software or Services and related Support services (each as defined below) as specified on an Order Form.

1.6 "**Open Source Software**" means computer software for which the source code is freely available according to the specific license under which that software is distributed.

1.7 "**Ordering Activity**" means an entity authorized to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I or as may be revised from time to time.

1.8 "**Order Form**" means an order form entered into between Customer and Invicti for Customer's purchase of the Invicti Solution (as defined below) or other services from Invicti.

1.9 "**Personal Data**" means information that may be used to readily identify an individual person.

1.10 "**Services**" means the Invicti proprietary software as a service scanner programs provided for use over the internet and any and all modified, updated, or enhanced versions thereof that Invicti may provide to Customer or its Users.

1.11 "**Software**" means the Invicti proprietary software programs provided in executable code form and any and all modified, updated, or enhanced versions thereof that Invicti may provide to Customer or its Users.

1.12 "**Subscription**" means a subscription purchased by Customer to access and use the Invicti Solution and to receive Support during the applicable Subscription Term.

1.13 "**Subscription Term**" means the subscription term for Customer's access and use of the Invicti Solution as set forth on the applicable Order Form.

1.14 **“Support”** means the standard maintenance or support provided by Invicti or its designated agents for the Invicti Solution as set forth in this Agreement.

1.15 **“Usage Parameters”** means the maximum number of permitted web application scan targets using the Invicti Solution as specified on an Order Form and any other parameters specified in the Documentation, Order Form, or other writing by Invicti regarding the scope of use of the Invicti Solution by Customer or its Users.

1.16 **“User(s)”** means Customer’s employees, contractors, or agents who are authorized to use the Invicti Solution subject to applicable Usage Parameters and the terms of this Agreement and only for Customer’s internal business purposes.

2. Invicti Solution.

2.1 *License Grant.* Subject to Customer’s compliance with the terms and conditions of this Agreement, including payment of all applicable fees, Invicti hereby grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable, worldwide license, solely during the Subscription Term or Trial Period (defined below), as applicable and set forth in the Order Form, to:

(i) if Customer has purchased the Services, access and use, and permit its Users to access and use, the Services over the internet solely for Customer’s internal business purposes, subject to the Usage Parameters set forth on the Order Form, and in accordance with the Documentation;

(ii) if Customer has purchased the Software, install, execute, and use, or permit Users to install, execute, and use, in object code form only, the Software on Customer-provided hardware solely for Customer’s internal business purposes, subject to the Usage Parameters set forth on the Order Form, and in accordance with the Documentation; and

(iii) for any purchase of the Invicti Solution, reproduce and use a reasonable number of copies of the Documentation in support of the exercise of the licenses granted in clauses (i) and (ii) above.

2.2 *Trial Version.* Notwithstanding Section 2.1, if Customer has purchased the Invicti Solution on a trial basis (**“Trial Version”**), Customer understands and agrees that the license grant set forth in Section 2.1 is granted by Invicti to Customer for the Trial Version for thirty (30) days (**“Trial Period”**), solely for Customer’s internal evaluation purposes, and subject to any and all technical limitations implemented by Invicti in the Trial Version. Customer acknowledges and agrees that if Customer has not purchased a Subscription prior to the expiration of the Trial Period, this Agreement will automatically terminate (without the requirement of providing any termination notice) and the Trial Version may cease functioning. In addition to the restrictions set forth in Section 2.3, Customer will not attempt to circumvent, dismantle, or otherwise interfere with any time-control disabling functionality in the Trial Version that causes the Trial Version to cease functioning upon the expiration of the Trial Period. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TRIAL VERSION IS PROVIDED “AS-IS” AND WITHOUT ANY WARRANTY WHATSOEVER OR ANY SUPPORT OR OTHER SERVICES (INCLUDING ANY UPDATES OR UPGRADES).

2.3 *Restrictions.* Except as expressly set forth in this Agreement, and to the maximum extent permitted by applicable law, Customer will not (and will not allow any third party to): (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure of the Invicti Solution or the source code from the Invicti Solution; (ii) distribute, license, sublicense, assign, transfer, provide, lease, lend, rent, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Invicti Solution (except as expressly and specifically authorized in writing by Invicti); (iii) use or access the Invicti Solution in order to build a similar or competitive product or service or to disclose to any third party any benchmarking or comparative study involving the Invicti Solution; (iv) modify, adapt, translate, or create derivative works of the Invicti Solution or Documentation; (v) remove, alter, or obscure in any way any proprietary rights notices

(including copyright notices) of Invicti or its suppliers on or within the Invicti Solution or Documentation; (vi) use the Invicti Solution for or in conjunction with, or initiate security scanning of, any web domain (or part of a domain) that has any content that may be adult in nature (e.g. tobacco, firearms, alcohol), obscene, pornographic, abusive, offensive, profane, or defamatory; (vii) use the Invicti Solution to scan any third party website or web application without such third party's prior written consent; or (viii) violate any applicable laws or regulations or any rights of any third party in connection with the use or access of the Invicti Solution. Invicti reserves all rights and licenses not expressly granted to Customer in Section 2.1, and no implied license is granted by Invicti. CUSTOMER ACKNOWLEDGES THAT THE INVICTI SOLUTION MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SUBSCRIPTION TERM AND/OR IN THE EVENT OF CUSTOMER'S USE INCONSISTENT WITH THIS AGREEMENT.

2.4 Delivery and Acceptance. Following execution of this Agreement, Invicti will make the Invicti Solution available to Customer either via the internet or for download, as applicable. The Invicti Solution, including any updates or upgrades that Invicti may make available to Customer from time-to-time, will be considered delivered and deemed accepted by Customer upon Invicti making the Invicti Solution (or the relevant update or upgrade) available to Customer.

2.5 Proprietary Rights. Invicti or its licensors retain all right, title, and interest in and to the Invicti Solution and related Documentation and materials (and any and all copies thereof) including any and all Intellectual Property Rights held by Invicti in the Invicti Solution. Title to the Invicti Solution will not pass from Invicti to Customer, and the Invicti Solution and all copies thereof will at all times remain the sole and exclusive property of Invicti.

2.6 Open Source Software. The Invicti Solution may incorporate and consist of third-party Open Source Software which Customer may use under the terms and conditions of the specific license under which the Open Source Software is distributed. Title to Open Source Software remains with the applicable licensor(s). Any Open Source Software provided with or contained in the Product is provided "AS IS" and without any warranty of any kind.

2.7 Feedback. To the extent Customer or any User provides suggestions or feedback to Invicti regarding the functioning, features, and other characteristics of the Invicti Solution, Documentation, or other materials or services provided or made available by Invicti ("**Feedback**"), Customer hereby grants Invicti a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid, fully-transferable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) under all of Customer's Intellectual Property Rights, for Invicti to use and exploit such Feedback in any manner and for any purpose. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3. Support.

3.1 Invicti Support. During the applicable Subscription Term set forth in an Order Form and subject to Customer's payment of applicable fees and prompt installation of applicable updates, Invicti will use commercially reasonable efforts to provide Customer with Support. Customer agrees to: (i) promptly contact Invicti with all problems with the Invicti Solution; and (ii) cooperate with and provide Invicti with all relevant information and implement any corrective procedures that Invicti requires to provide Support.

3.2 Provision of Support. During the Term, Customer may receive:

3.2.1 Online Support. Customer's contact(s) may submit support and related requests via an online portal that is available on the Support website 24 hours a day, 7 days a week, 365 days a year. Each request is given a unique identification number for Customer's convenience and reference. All online support submissions are managed using the English language.

3.2.2 E-mail Support. E-mail support is available in response to support requests made via the online portal and is generally available 17 hours a day, 5 days a week.

3.2.3 **Other Support.** In addition to its general Support offerings described above, Invicti will: (a) provide Customer with technical support via telephone on an as-needed basis; (b) provide online access to technical support bulletins and other user support information and forums to the full extent it makes such resources available to its other customers; and (c) use commercially reasonable efforts to provide Customer with any other services as may be useful in troubleshooting and error correction.

3.3 **Limitations.** Invicti will have no obligation to provide Support for problems caused by or arising out of the following: (i) modifications or changes to the Software or Services; (ii) use of the Software or Services not in accordance with the Agreement or Documentation; or (iii) third-party products that are not authorized in the Documentation or, for authorized third-party products in the Documentation, problems arising solely from such third-party products.

3.4 **End of Life / End of Support.** Invicti shall not be obligated to provide Support for any version of the Invicti Solution aside from the current and previous version. Notwithstanding anything to the contrary herein, Invicti may, at its discretion, decide to retire past versions the Invicti Solution from time to time ("**End of Life**"). Invicti shall publicly post a notice of End of Life, including the last date of general commercial availability of the affected version of the Invicti Solution and the timeline for discontinuing the Support on its website. Invicti shall have no obligation to provide Support for the version of the Invicti Solution that is outside of the applicable service life.

4. Security and Data Privacy.

Customer agrees that Invicti may process technical and related information about Customer's and Customer's Users' use of the Invicti Solution as well as about the performance of the Invicti Solution in accordance with its attached Privacy Notice. Each party will comply with its respective obligations under applicable data protection legislation and will maintain appropriate administrative, physical, technical, and organizational measures that provide an appropriate level of security for Confidential Information (defined below) and Customer Data. If Invicti processes Personal Data on Customer's behalf to provide the Invicti Solution, Customer expressly agrees that it is the data controller (and Invicti, the data processor) and that it will determine the purpose and manner in which such Personal Data is or will be processed. To the extent that either party acts as a controller, such party will comply at all times with its obligations under applicable data protection legislation.

5. Fees and Payment.

5.1 **Subscription Fees.** Fees due and payable by Customer for the Invicti Solution during the applicable Subscription Term will be as set forth on an Order Form in accordance with the GSA Schedule Pricelist. At any time during a Subscription Term, Customer may submit an Order Form to increase the Usage Parameters and, upon Invicti's acceptance of such Order Form, Customer will pay the fees due for such increase at a pro-rated amount for the remainder of Customer's then-current Subscription Term. Any Order Form for such an increase will renew concurrently with Customer's then-current Subscription Term for a period equal to Customer's initial Subscription Term.

5.2 **Support Fees.** Support fees are included in the Subscription fees.

5.3 **Payment Terms.** Unless otherwise stated on an Order Form, all fees are due within thirty (30) days of the invoice receipt date or of the start of a new Subscription Term, and all payments must be made in the currency of the United States. Customer will reimburse Invicti for all reasonable travel expenses incurred by Invicti in its performance under this Agreement in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

5.4 *Taxes.* Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.5 *Reserved.*

5.6 *Inspection Right.* During the Subscription Term and for one (1) year after its expiration or termination, Customer will maintain accurate records of its use of the Invicti Solution sufficient to show compliance with the terms of this Agreement. During this period, Invicti will have the right to inspect Customer's use of the Invicti Solution to confirm compliance with the terms of this Agreement. Any such inspection is subject to reasonable notice by Invicti, and subject to Government security requirements and will not unreasonably interfere with Customer's business activities. Invicti may conduct no more than one (1) inspection in any twelve (12) month period and only during normal business hours. Customer will reasonably cooperate with Invicti and any third-party auditor and will, without prejudice to other rights of Invicti, address any non-compliance identified by the inspection by promptly paying additional fees showed to be due and owing.

6. Term and Termination.

6.1 *Term.* Subject to the termination rights as set forth in this Agreement, the term of this Agreement will commence on the Effective Date and will continue for as long as the Invicti Solution is being provided to Customer under this Agreement. The Subscription Term may be renewed for successive terms equal in duration to the initial Subscription Term by exercising an option, or by both parties executing a new purchase order or agreement in writing.

6.2 *Termination.* When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Invicti shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

6.3 *Effect of Termination.* Upon the termination of this Agreement for any reason: (i) the licenses granted under this Agreement in respect of the Invicti Solution will immediately terminate, and Customer and its Users will cease use of the Invicti Solution; (ii) Invicti's obligations to provide Support will immediately terminate; (iii) Customer will pay to Invicti the full amount of any outstanding fees due hereunder; and (iv) within ten (10) calendar days of such termination, each party will destroy or return all Confidential Information of the other party in its possession or control and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for the purposes of ensuring compliance with this Agreement. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE INVICTI SOLUTION MAY CONTAIN DISABLING CODE THAT (EITHER AUTOMATICALLY OR AT INVICTI'S CONTROL) WILL RENDER THE INVICTI SOLUTION (AND RELATED DATA) UNUSABLE UPON TERMINATION OR CUSTOMER'S BREACH OF THIS AGREEMENT. The following Sections will survive any termination or expiration of this Agreement: 1, 2, 4, 5, 6.3, and 7 through 13 (inclusive).

7. Limited Warranty.

Invicti represents and warrants to Customer that the Invicti Solution, when used for its intended purpose and in accordance with Invicti's instructions, the Invicti Solution will perform substantially in conformance with the Documentation for a period of thirty (30) calendar days from the date Customer is first permitted to access and use the Invicti Solution. Customer's sole and exclusive remedy, and Invicti's sole and exclusive liability, for any breach of this warranty will be, at Invicti's sole discretion, to either remedy the defect or refund the applicable fees paid by Customer for the Invicti Solution provided that Customer promptly notifies Invicti in writing of any alleged breach of this warranty within such thirty (0) calendar day period. This warranty is null and void to the extent the Invicti Solution: (i) fails to conform with this warranty as a result of its use with any third-party hardware or

software; or (ii) is used for an unintended purpose, is used other than in accordance with its published documentation or specifications, or is otherwise used in breach of this Agreement. OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INVICTI AND ITS SUPPLIERS AND LICENSORS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS AGREEMENT AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. INVICTI AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, BE FREE FROM DEFECTS, OR MEET CUSTOMER'S REQUIREMENTS.

8. Indemnification.

8.1 *Indemnification by Invicti.* Invicti has the right to indemnify, intervene to defend, and hold Customer harmless against any third party claim that the Software or Services infringe or misappropriate any Intellectual Property Rights of a third party held under the laws of the United States or the European Economic Area provided that Customer promptly notifies Invicti of any and all threats, claims, and proceedings related thereto and gives reasonable assistance and the opportunity for Invicti to assume control over defense and settlement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Invicti will not be responsible for any settlement it does not approve, provided that any such approval will not be unreasonably withheld. The foregoing obligations do not apply with respect to: (i) the Invicti Solution or portions or components thereof

(a) not created by Invicti; (b) that are modified after delivery by Invicti; (c) combined with other products, processes, or materials where the alleged infringement relates to such combination; (d) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (e) where Customer's use of such Invicti Solution is not strictly in accordance with the Agreement and any Documentation; or (f) a Trial Version. In the event of a claim, or if Invicti believes a claim is likely, Invicti may modify the Invicti Solution, obtain a license for Customer, or – if none the foregoing are accomplished – terminate this Agreement.

8.2 Reserved.

9. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL INVICTI OR ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. INVICTI'S AND ITS LICENSORS' LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE LICENSE FEES CUSTOMER PAID FOR THE INVICTI SOLUTION GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS WILL APPLY REGARDLESS OF WHETHER INVICTI OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER MAY NOT BRING A CLAIM UNDER THIS AGREEMENT MORE THAN SIX (6) YEARS AFTER THE CAUSE OF ACTION ARISES.

10. Confidentiality.

"Confidential Information" means any proprietary information disclosed by one party ("**Discloser**") and received by the other party ("**Recipient**") during, or prior to entering into, this Agreement that Recipient should know is confidential or proprietary based on the circumstances surrounding the disclosure. Confidential Information includes the Invicti Solution and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by Recipient; (ii) is rightfully known by Recipient at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by Recipient without use of Discloser's Confidential Information; or

(iv) Recipient rightfully obtains from a third party without restriction on use or disclosure. Recipient will maintain the confidentiality of Confidential Information, and Recipient agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. Recipient will protect the secrecy of and prevent disclosure and unauthorized use of Discloser's Confidential Information using the same degree of care that it takes to protect its own confidential information and will in no event use less than reasonable care. Recipient may disclose Discloser's Confidential Information if required by judicial or administrative process, provided that Recipient first provides Discloser with prompt notice of such required disclosure to enable the Discloser to seek a protective order. Invicti recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor. Upon termination or expiration of this Agreement and Discloser's request, Recipient will promptly return or destroy (and provide written certification of such destruction) Discloser's Confidential Information.

11. Publicity.

Customer agrees that Invicti may publicly disclose that it is providing the Invicti Solution to Customer and may use Customer's name to identify Customer in promotional materials, including press releases, provided that Invicti does not state or imply that Customer endorses Invicti's products or services and to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Customer may not issue any press release or publicity regarding the Agreement, use the Invicti name or logo or other identifying indicia, or publicly disclose that it is using the Invicti Solution without Invicti's prior written consent.

12. Government Licenses.

For purposes of sales to government entities in the United States, the Invicti Solution and the accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of the Invicti Solution or the accompanying Documentation by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule.

13. Export Compliance.

Customer acknowledges that the laws and regulations of the United States of America and foreign jurisdictions may restrict the export and re-export of certain commodities and technical data of United States of America origin, including the Invicti Solution. Customer agrees that it will not export or re-export the Invicti Solution without the appropriate United States or foreign government licenses or permits.

14. Miscellaneous.

The parties may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to a third party without the written consent of the other party, except that Customer may, without such consent, assign or transfer this Agreement, in whole, pursuant to a transfer of all or substantially all of Customer's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer of this Agreement by Customer in contravention of the foregoing will be null and void. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement, or consent required or permitted hereunder will be in writing; notices will be sent to the address that the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to

the minimum extent necessary so that this arrangement will otherwise remain in full force and effect and enforceable. This Agreement will be deemed to have been made in, and will be construed pursuant to, the Federal laws of the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. This is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments will be effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, will have no force or effect.

IN WITNESS WHEREOF, the parties through their duly authorized representatives hereby agree to the terms of this Agreement as of the Effective Date.

[CUSTOMER NAME]:

INVICTI LIMITED:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Privacy Policy

Last updated as of April 8, 2020.

Thank you for visiting the Invicti websites ("Sites"). Invicti develops web application security solutions. When individuals visit our Sites, want to hear more about or try our solutions, or purchase our solutions, we collect and process personal information. This Privacy Policy and our Cookie Policy govern how Invicti collects, uses, stores, and discloses personal information that we obtain through or from:

- Individuals who visit, access, download, or use the Sites;
- Individuals who contact us via our contact form on the Sites (i.e., potential customers);
- Individuals who purchase our solutions and register for our products and services ("Services").

Our Sites and Services are collectively referred to as the "Platform" throughout this Privacy Policy.

This Privacy Policy covers our Platform and any other websites, products, software, applications, content, data feeds, and other services owned and operated by Invicti on which authorized links to this Privacy Policy or to the [Cookie Policy](#) are posted.

If you have any questions, comments, or concerns regarding this Privacy Policy, our Cookie Policy, and/or our data practices, or if you would like to exercise your rights, do not hesitate to contact us at privacy@Invicti.com or see our information below.

1. Who We Are / Data Controller. If you use our Platform, except as may be stated in this Privacy Policy, the data controller of your information is Invicti Limited or one of its affiliated companies or subsidiaries ("Invicti", "we", "us").

2. Children's Privacy. Our Platform is not intended for use by individuals under the age of 18, and Invicti does not target the Platform to minors. Invicti does not knowingly collect personal information from children under the age of 18.

If you are under the age of 18, please do not provide us with any personally identifiable information.

3. Personal Information We Collect and How It Is Collected. "Personal data" – or "personal information" as also used throughout this Privacy Policy – means any information about an individual from which that person may be identified. For example, it may include your name, telephone number, email address, payment information, IP address, device ID, and location information. It does not include data from which the identity of an individual has been definitively removed along with any identifiers connected to such individual.

What personal information we collect and process depends on how and why you use our Platform. Generally, we process personal information that we receive:

- Directly from you when you provide it to us, such as when you request more information about or purchase our Services; and
- Indirectly, through automated technologies, such as cookies, or from third parties.

This is all explained in more detail below.

3.1 Information Collected Directly. What personal information we collect from you directly will depend on how you use our Platform. You can generally visit our Sites without submitting any personal information to us, but you may be asked for information if you would like to hear more about, or sign up for, our Services.

3.1.1 Inquiry/ Demo Information. To find out more about our Services, or to try them out, we request certain personal information from you:

- First and last name;
- Company name;
- Work email; and
- Telephone number.

3.1.2 Account Registration Information. To sign up to use our Services, we collect:

- First and last name;
- Company name;
- Company website;
- Company email;
- Telephone number; and
- Country.

3.1.3 Payment Information. If you wish to use our Services, we will process your payment information in order to get you started. Payment processing is performed by third-party service providers as explained further below. Invicti only receives confirmation of your payment once it goes through, and such confirmation is then linked to your transactions and other personal information.

3.1.4 Communication Information. When you contact us via email or otherwise, we also collect and process any additional information you provide which may include personal information that you voluntarily submit to us in those emails, contact forms, or other communications.

3.2 *Information Collected Indirectly.*

3.2.1 Device and Usage Information. When you download, use, or interact with the Platform, even if you do not have an account, we – or authorized third parties engaged by us – may automatically collect information about your use of the Platform via your device, some of which is considered personal information. “Device and Usage Information” that we collect consists of:

- Device Information: information about the devices and software you use to access the Platform – primarily the internet browser that you use, the website or source that linked or referred you to the Platform, your IP address or device ID (or other persistent identifier that uniquely identifies your computer or mobile device on the Internet), the operating system of your computer or mobile device, device screen size, and other similar technical information.
- Usage Information: information about your interactions with the Platform, including access dates and times, hardware and software information, device event information, crash data, cookie data, aggregated scan data or vulnerability data, and feature usage data. This information allows us to understand the screens that you view, how you’ve used the Platform (which may include administrative and support communications with us), and other actions you’ve taken on the Platform. We, or our authorized third parties, automatically collect log data when you access and use the Platform, even if you have not created an account or logged in. We use this information to administer and improve the Platform, analyze trends, track users’ use of the Platform, and gather broad demographic information for aggregate use.

3.2.2 Cookies and Similar Technologies. Invicti or its authorized third parties use cookies and similar technologies to collect the information described above. Some cookies are necessary to make the Sites and our content available to you, while others, such as those used by Google Analytics, enable us to analyze and measure audience and traffic to the Sites. Cookies are also used by us, advertisers (or ad-tech providers), and social media companies to develop

and serve ads that are more relevant to your interests or to generally help us increase the number of customers who use our Services. For more information on our use of cookies and the data that they collect, see our [Cookie Policy](#).

3.2.3 Information from Third Parties. In some instances, we process personal information from third parties which may consist of data from our partners such as transactional data from providers of payment services or information from our lead generation partners.

3.3 Analytics/Aggregated Information. With the Device and Usage Information collected by our third-party analytics services, such as Google Analytics or Pendo, we generate and process aggregated information, such as statistical or demographic data. Aggregated Information may be derived from personal data, but it is not considered personal data if it does not directly or indirectly reveal your identity. For example, we may track the total number of visitors to our Platform or the number of visitors to each part of our Platform, and we may aggregate usage data to calculate the percentage of users accessing a specific feature of the Platform and analyze this data for trends and statistics.

However, if we or our third-party analytics service providers combine or connect aggregated information with your personal data so that it can directly or indirectly identify you, we treat the combined data as personal data which will be processed in accordance with this Privacy Policy. Please visit our [Cookie Policy](#) for more information on analytics, and please note that you may opt-out of certain data collection practices covered in this Section by contacting privacy@Invicti.com.

4. Why We Collect Your Personal Information and How We Use It. Our mission is to provide a safe, efficient, and high-quality Platform, and we – or our authorized third-party service providers who assist us in providing the Platform – process your personal information for this purpose. Specifically, personal information is processed in order to:

- Provide you with access to and the ability to use the Platform;
- Process and complete transactions and send you related information, including purchase confirmations and invoices;
- Respond to your queries and requests or otherwise communicate directly with you;
- Improve the content and general administration of the Platform and enhance user experience;
- Provide customer support;
- Detect fraud, illegal activities, or security breaches;
- Provide you with notices regarding purchases or other important information;
- Ensure compliance with applicable laws;
- Perform system maintenance and upgrades and enable new features;
- Conduct statistical analyses and analytics;
- Increase the number of customers who use our Platform through advertising and marketing;
- To send you marketing communications if you have opted in to receive them (depending on your location); and
- Provide information to regulatory bodies when legally required and only as outlined in this Privacy Policy.

5. Managing Your Preferences. If your personal data changes, or if you no longer desire to use our Services, you may delete your account or contact us at privacy@Invicti.com. We will respond to your request within a reasonable timeframe.

6. Disclosure of Your Personal Information. We only disclose your personal information as described below.

6.1 Third-Party Service Providers. Invicti discloses users' information to our third-party agents, contractors, or service providers who are hired to perform services on our behalf. These companies do things to help us provide the Platform and – in some cases – collect information directly. Below is an illustrative list of functions for which we may use third-party service providers:

- Hosting and content delivery network services;
- Analytics services;
- CRM providers;
- Lead generation partners;
- Marketing and social media partners;
- Customer support services;
- Payment processors;
- Functionality and debugging services; and
- Professional service providers, such as auditors, lawyers, consultants, accountants, and insurers.

6.2 Business Transfers. As we continue to grow, we may purchase websites, applications, subsidiaries, and other businesses or business units. Alternatively, we may sell businesses or business units, merge with other entities, and/or sell assets or stock, in some cases as part of a reorganization or liquidation in bankruptcy. As part of these transactions, we may transfer your personal information to a successor entity upon a merger, consolidation, or other corporate reorganization in which Invicti participates, or to a purchaser or acquirer of all or a portion of Invicti's assets, bankruptcy included.

6.3 Anonymized Information. We share aggregated, automatically-collected, or otherwise non-personal information with third parties for various purposes, including: (i) compliance with reporting obligations; (ii) for business or marketing purposes; (iii) to assist us and other parties in understanding our users' interests, habits, and usage patterns for certain programs, content, services, marketing, and/or functionality available through the Platform. We do not share personal information about you in these cases.

6.4 Legal Obligations and Security. In addition, Invicti will preserve or disclose your personal information in limited circumstances (other than as set forth in this Privacy Policy), including: (i) with your consent; (ii) when we have a good faith belief it is required by law, such as pursuant to a subpoena, warrant, or other judicial or administrative order (as further explained below); (iii) to protect the safety of any person, to protect the safety or security of our Platform or to prevent spam, abuse, or to protect against any other malicious activity of actors with respect to the Platform; or (iv) to protect our rights or property or the rights or property of those who use the Platform.

If we are required to disclose personal information by law, such as pursuant to a subpoena, warrant, or other judicial or administrative order, our policy is to respond to requests that are properly issued by law enforcement within the United States or via mutual legal assistance mechanism (such as a treaty). Under such circumstances, we may at our discretion attempt to provide you with prior notice that a request for your information has been made in order to give you an opportunity to object to the disclosure. However, government requests may include a court-granted non-disclosure order which prohibits us from giving notice to the affected individual.

Note that if we receive information that provides us with a good faith belief that there is an exigent emergency involving the danger of death or serious physical injury to a person then we may provide information to law enforcement trying to prevent or mitigate the danger as determined on a case-by-case basis.

7. Payment Processing. We do not directly collect your payment information, and we do not store your payment information. We use third-party, PCI-compliant payment processors that collect payment information on our behalf in order to complete transactions. While our administrators are able to view and track actual transactions via customer portals, we do not have access to or process your credit card information.

8. Retention Period.

8.1 General. We use the following criteria to determine our retention periods: the amount, nature, and sensitivity of your information; the reasons for which we collect and process your personal data; the length of time we have an ongoing relationship with you and provide you with access to our Services; and applicable legal requirements. We will retain personal information we collect from you where we have an ongoing legitimate business need to do so (for example, to comply with applicable legal, tax, or accounting requirements). Additionally, we cannot delete

information when it is needed for the establishment, exercise, or defense of legal claims (also known as a “litigation hold”). In this case, the information must be retained as long as needed for exercising respective potential legal claims.

When we have no ongoing legitimate business need to process your personal information, we will either delete or anonymize it or – if this is not possible (for example, because your personal information has been stored in backup archives) – we will securely store your personal information and isolate it from any further processing until deletion is possible.

If you have questions about, or need further information concerning, our data retention periods, please send an email to privacy@Invicti.com.

8.2 Time Frame of Deletion. If personal data can no longer be retained or is no longer necessary, it will be erased or anonymized in the time frame required by applicable law.

8.3 Anonymization. In some instances, we may choose to anonymize your personal data instead of deleting it, for statistical use, for instance. When we choose to anonymize your personal data, we make sure that there is no way that the personal data can be linked back to you or any specific user.

9. Protecting Your Personal Data. No method of transmission over the Internet, or method of electronic storage, is 100% secure. However, we take steps that are reasonably necessary to securely provide our Platform. We have put in place reasonably appropriate security measures designed to prevent your personal data from being accidentally lost, used, or accessed in an unauthorized way, altered, or disclosed. We limit access to personal data only to those employees, agents, contractors, and third parties who have a business need-to-know.

We also have procedures in place to deal with any suspected data security breach. If required, we will notify you and any applicable regulator of a suspected data security breach. We also require those parties to whom we transfer your personal information to provide acceptable standards of security.

10. International Transfers. We have locations outside of the EU, and the personal information that we collect may be stored on servers located in the United States or in any other country in which Invicti, its affiliates, partners, service providers, or agents maintain facilities. This means that your personal information may be collected, processed, and stored in such locations which may have data protection laws that are different from (and sometimes less protective than) the laws of your country or region, such as the General Data Protection Regulation (“GDPR”).

By sending us personal information, you agree and consent to the processing of your personal information outside of the EU in locations such as the United States which may not offer an equivalent level of protection to that required in other countries (particularly the EU) and to the processing of that information by us on servers located outside of the EU, as described in this Privacy Policy.

We have implemented safeguards designed to ensure that the personal information we process remains protected in accordance with this Privacy Policy including when processed internationally or by our third-party service providers and partners. The safeguards we may take in our discretion include, for instance, entering into binding agreements in connection with any onward transfers of personal information. We may implement other mechanisms and take similar appropriate safeguards with our third-party service providers and partners. Further details can be provided upon request.

11. Changes to this Privacy Policy. Invicti may update this Privacy Policy (and the [Cookie Policy](#)) from time to time, at its sole discretion. If we make material changes, we will post an updated Privacy Policy within the Platform along with a change notice. Changes, modifications, additions, or deletions will be effective immediately on their posting to the Platform. If we make significant changes, we may also send registered users a notice that this Privacy Policy has been changed. We encourage you to review this Privacy Policy regularly for any changes. Your continued use of the Platform and/or your continued provision of personal information to us after the posting of such notice will be

subject to the terms of the then-current Privacy Policy. If you continue to use the Platform, you will be deemed to have accepted the change.

12. How To Contact Us About Privacy. If you have any questions regarding this Privacy Policy, please contact Invicti at privacy@Invicti.com or at the address below:

Invicti
220 Industrial Blvd., Suite 102
Austin, TX 78745

13. Additional Information for Users in California. Invicti provides the Platform to other businesses, and in doing so we may collect and process personal data on behalf of our business customers, including personal data about California residents. In doing so, Invicti is a service provider under the CCPA. As a service provider, we will collect and process personal data on behalf of a customer to provide the Platform for which that customer has engaged us, in accordance with our contract with such customer. If you'd like to exercise your rights under the CCPA with respect to your personal data we hold as a service provider for a customer, you should contact that customer directly.

If you have a question or would like to submit a request related to the personal data we collect related to our business-to-business relationship with you or your company, please contact Invicti at privacy@Invicti.com.

14. Additional Information for Users in the European Economic Area. This Section applies to individuals located in the EEA.

14.1 Categories of Recipients of Personal Data. The categories of recipients of personal data with whom we may share your personal data are listed in the "Disclosure of Your Personal Information" section above.

14.2 Legal Bases and Purposes of Processing. Invicti uses your personal information for a number of different purposes as described in this Privacy Policy. Some uses are essential for us to provide the Platform or to fulfill our legal obligations, some uses help us run the Platform efficiently and effectively, and some uses enable us to improve our Platform with more relevant and personalized offers and information. In all cases, under GDPR, we must have a reason and a legal ground for processing your personal information. Some of the most common legal grounds we rely on are briefly explained below.

14.2.1 Performance of a Contract. We may process your personal data for the purposes of a contract to which you are a party. For instance, if you want to use our Platform, we need to process your account registration information, location information, and payment information in order to enable you to do so.

14.2.2 Legitimate Interests. We may process personal data where it is necessary for our legitimate business interests, but only to the extent that they are not outweighed by your own interests or fundamental rights and freedoms. We generally rely on legitimate interests to: provide and maintain a Platform that works well and securely; comply with applicable laws; carry out fraud prevention; and generally improve the Platform. When we rely on this legal basis, we'll carry out a legitimate interest assessment to ensure we consider and balance any potential impact on you (both positive and negative) and your rights under applicable data protection laws.

14.2.3 Consent. Invicti may rely on consent where it is required, such as with respect to certain information collected via cookies and similar technologies (other than strictly necessary cookies) or when we're asking you to confirm your marketing preferences. When we rely on consent, you'll be asked to confirm that you give your permission to Invicti to process your personal information. You have the right to withdraw your consent at any time if you no longer wish to have Invicti process your personal data.

14.2.4 Legal Obligation. Invicti will on occasion be under a legal obligation to obtain and disclose your personal data. Where possible, we will notify you when processing your data due to a legal obligation, but this may not always be possible. For instance, Invicti may need to provide your data in order to prevent criminal activity or to help to

detect criminal activity, in which case we may share information with law enforcement without providing notice to you. This is done in a safe and secure manner. It's essential that Invicti complies with its legal, regulatory, and contractual requirements, so if you object to this processing then Invicti will not be able to provide its Platform to you.

14.3 Your Rights and Choices Under GDPR. If the GDPR applies to you because you are in the EEA, you have the following rights in relation to your personal data:

- The right to be informed – our obligation to inform you that we process your personal data (and that's what we're doing in this Privacy Policy);
- The right of access – your right to request a copy of the personal data we hold about you (also known as a 'data subject access request');
- The right to rectification – your right to request that we correct personal data about you if it is incomplete or inaccurate (though we generally recommend first making any changes in your Account Settings);
- The right to erasure (also known as the 'right to be forgotten') – under certain circumstances, you may ask us to delete the personal data we have about you (unless it remains necessary for us to continue processing your personal data for a legitimate business need or to comply with a legal obligation as permitted under the GDPR, in which case we will inform you);
- The right to restrict processing – your right, under certain circumstances, to ask us to suspend our processing of your personal data;
- The right to data portability – your right to ask us for a copy of your personal data in a common format (for example, a .csv file);
- The right to object – your right to object to us processing your personal data (for example, if you object to us processing your data for direct marketing); and
- Rights in relation to automated decision-making and profiling – our obligation to be transparent about any profiling we do, or any automated decision-making.

These rights are subject to certain rules around when you can exercise them. If you are located in the EEA and wish to exercise any of the rights set out above, please contact us at privacy@Invicti.com or at the addresses provided below.

You will not have to pay a fee to access your personal data (or to exercise any of the other rights) unless your request is clearly unfounded, repetitive, or excessive. Alternatively, we may refuse to comply with your request under those circumstances.

We may need to request specific information from you to help us confirm your identity. This is a security measure to ensure that personal data is not disclosed to any person who has no right to receive it.

If we cannot reasonably verify your identity, we will not be able to comply with your request(s).

We will respond to all legitimate requests within one month. Occasionally, it may take us longer than a month if your request is particularly complex or if you have made a number of requests. In this case, we will notify you and keep you updated as required by law.

In addition, if you no longer wish to receive our marketing/promotional information, we remind you that you may withdraw your consent to direct marketing at any time directly from the unsubscribe link included in each electronic marketing message we send to you. If you do so, we will promptly update our databases, and will take all reasonable steps to meet your request at the earliest possible opportunity, but we may continue to contact you to the extent necessary for the purposes of providing our Platform.

Finally, you have the right to make a complaint at any time to the supervisory authority for data protection issues in your country of residence. We would, however, appreciate the chance to address your concerns before you approach the supervisory authority, so please contact us directly first.

If you are a user in the EEA, you may also contact our representative in the European Union:

Attn:		Data		Protection		Officer
Level			1/2,			Mirabilis,
Intornjatur						Street
CENTRAL			BUSINESS			DISTRICT
Mriehel			,CBD			3050
Malta						

Cc:	220	Industrial	Blvd.,	Suite	102
Austin, TX 78745					

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Governing Law: This license is governed by the Federal laws of the United States.

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August 2018