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**Carahsoft Rider to Manufacturer End User License Agreements  
(for U.S. Government GSA End Users)**

- 1. Scope.** This Carahsoft Rider and the Imperva, Inc. ('Manufacturer') End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee") buying under GSA.
  
- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
  - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
  
  - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
  
  - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  
  - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or

Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court..

- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) Customer Indemnities.** All Manufacturer EULA clauses referencing Ordering Activity indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

- (m) Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.



## END USER LICENSE AND SERVICES AGREEMENT

BY CLICKING ON THE "ACCEPT" BUTTON, TAKING AN ACTION TO INDICATE ACCEPTANCE, OR USING THE PRODUCTS (AS DEFINED BELOW) END USER AGREES TO THE TERMS OF THIS END USER LICENSE AND SERVICES AGREEMENT ("AGREEMENT") WITH IMPERVA, INC. ("IMPERVA"). IN THE EVENT THE INDIVIDUAL IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A CORPORATE OR OTHER PUBLIC OR PRIVATE ENTITY, END USER REFERS TO THAT ENTITY, AND SUCH INDIVIDUAL CERTIFIES THAT HE/SHE IS AN AUTHORIZED REPRESENTATIVE OF THE END USER. IF END USER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "CANCEL" BUTTON, DISCONTINUE THE SET-UP AND INSTALLATION OR DISCONTINUE USE OF THE PRODUCT. IF THE TERMS OF THE AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

1. **Definitions.** The following capitalized terms shall have the meanings set forth below:

- a. **"Appliance"** means the Imperva branded computer hardware on which the Software operates.
- b. **"Delivery"** shall mean, (i) in the case of Software, when the Software is made available by Imperva for End User to electronically download; (ii) in the case of Subscription Services, when the Subscription Service has been provisioned and made available to End User to access; and (iii) in the case of an Appliance, when the Appliance has been tendered by Imperva for shipment.
- c. **"Documentation"** means Imperva's technical specifications that accompany and describe the installation, use and operation of a Product.
- d. **"End User"** means the party that has purchased the Products for its own use, either directly from Imperva or through an authorized third party.
- e. **"Licensed Volume"** means the volume or other measurement of permitted use for the Products as agreed to by Imperva.
- f. **"Open Source Software"** means third party software that Imperva distributes with the Software pursuant to a license that requires, as a condition of use, modification and/or distribution of such software, that the software or other software combined and/or distributed with it be (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- g. **"Products"** mean Appliances, Software or Subscription Services, as the case may be.
- h. **"Services"** mean Professional Services or Support, as the case may be.
- i. **"Software"** means Imperva's or its licensors' software (in object code format) or content, any updates or upgrades thereto provided to End User by Imperva and any Documentation pertaining thereto. Software may be delivered to End User on Appliances or on a standalone basis. The term "Software" does not include Open Source Software.
- j. **"Subscription Services"** mean the subscription services, including content, updates and upgrades thereto, that may be made available to End User by Imperva directly or through its partners and suppliers. Subscription Services include, without limitation, the ThreatRadar service and Imperva offered services that are "powered by Incapsula."
- k. **"Support"** means the technical support and maintenance services for the Product and periodic bug fixes and updates to the Software that Imperva may make generally available at an annual subscription cost to end users.
- l. **"Professional Services"** mean the installation, configuration, and training services that Imperva may provide to an End User.

2. **Licenses and Restrictions.**

- a. **Software.** Conditioned on the terms and conditions of this Agreement, Imperva grants End User a perpetual (subject to Section 11 or any term license restrictions), nonexclusive, nontransferable, nonsublicensable license to use the Software in accordance with its Documentation only for End User's internal business purposes on the Appliances or in the Licensed Volume licensed by End User. If End User purchases Software on a standalone basis, the license granted herein shall include the right to copy the Software up to the Licensed Volume.
- b. **Subscription Services.** Conditioned on the terms and conditions of this Agreement, Imperva grants End User a nonexclusive, nontransferable, nonsublicensable, revocable right to use and access the Subscription Services in

accordance with its Documentation only for End User's internal business purposes.

**c. Restrictions.** End User may not (and may not permit any third party to): (i) modify, incorporate or use in any other works, translate, reverse engineer (except to the limited extent applicable statutory law expressly prohibits reverse engineering restrictions), decompile, disassemble, otherwise attempt to derive source code from or create derivative works based on the Products; (ii) make unauthorized copies of the Products; (iii) disclose, distribute, transfer or market the Products to third parties; (iv) remove or modify any proprietary notices, labels or marks on or in any copy of the Products; (v) distribute, sell, sublicense, rent, lease or use the Products (or any portion thereof) for time sharing, hosting, service provider or other computer services to third parties or otherwise make the functionality of the Software available to third parties; (vi) publicly disseminate performance information or analysis (including, without limitation, benchmarks and performance tests) from any source relating to the Products; (vii) access the embedded database or any other third party product as part of the Software with applications other than the Software; or (viii) use the Products other than as permitted herein.

**d. Appliance.** End User acknowledges that the Software included with the Appliance is licensed and not sold. Such Software is licensed solely in conjunction with such Appliance (and not separately or apart from such Appliance). If End User sells, leases, lends, rents, distributes or otherwise transfers any Appliance to any third party or if Imperva terminates this Agreement under Section 11.b or for a breach of Section 2.c, then End User will erase all Software from such Appliance.

**e. Open Source Software.** Open Source Software is copyrighted and licensed under the GPL/LGPL and other licenses. Copies of or references to those licenses are included with Software in the "Help" section. End User may obtain the complete corresponding Open Source Software source code for a period of three years after Imperva's last shipment of the Software, by sending a money order or check for \$10 to: Legal Department – Open Source Software Request, Imperva, Inc., 3400 Bridge Parkway, Suite 200, Redwood Shores, CA 94065, United States.

**f. US Government End User.** For purposes of this Agreement, "commercial computer software" is defined at FAR 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of the Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government End User Section 2(f) is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data.

**3. Support and Subscription Services.** Provided End User has an active and fully paid contract for Support, Imperva will provide Support in accordance with its standard Support terms then in effect. Provided End User has an active and fully paid contract for Subscription Services, Imperva will provide such services in accordance with its standard Service Level Agreement (SLA) then in effect.

#### **4. Additional Terms for Subscription Services.**

**a. Accessing and Use of Subscription Services.** Except as explicitly set forth herein, End User is solely responsible for acquiring and maintaining all of the equipment, software, services and items necessary to access and make use of the Subscription Services, including without limitation paying all charges, taxes, and other costs and fees related to internet access. End User may access the Subscription Services only through the interfaces and protocols provided or authorized by Imperva and its partners, and agrees to set up, maintain and use the Subscription Services in strict compliance with Imperva's and its partners' instructions. End User is solely responsible for maintaining the confidentiality of any passwords and account information required to access Subscription Services, for all acts that occur in connection with End User's account and to immediately notify Imperva of any unauthorized use of End User's account. Any reports generated by the Subscription Services are not to be considered consumer reports subject to the federal Fair Credit Reporting Act ("FCRA"), and End User represents that it will not use such reports for making credit eligibility decisions or for any other permissible purpose listed in section 604 of the FCRA (15 U.S.C. 1681b). In the event of expiration or termination of any Subscription Services that require DNS routing, End User will be solely responsible for rerouting its DNS traffic and Imperva, its partners and suppliers shall have no liability for End User's failure to do so.

**b. Authorization.** Certain Subscription Services are offered to cache, monitor and optimize web pages and web sites. As such, End User hereby grants Imperva and its partners a nonexclusive, worldwide, fully paid-up, royalty-free license to use, transfer, display, minimize and compress the content and material on End User web sites ("**End User Content**"), in any media formats, solely as necessary for the performance of the Subscription Services. Imperva and its partners do not provide backup services for End User Content, and if End User's use of the Subscription Services terminates for any reason, Imperva and its partners may, without notice, delete or deny End User access to any of content or meta data that may remain in its/their possession or control. In addition, End User agrees that if, at Imperva's and its partners' sole

determination, End User is using the Subscription Services in a manner that violates laws, rules or regulations or creates an excessive burden or potential adverse impact on Imperva's, its partners' or its suppliers' systems, business or customers, Imperva, its partners or its suppliers may suspend or terminate End User's access to the Subscription Services without notice to or liability to End User.

**5. Professional Services.** Professional Services, if any, to be provided by Imperva to an End User will be subject to a separate statement of work ("**SOW**") agreed to by Imperva and Imperva's standard Professional Services terms then in effect.

**6. Fees, Payment Terms, Shipment and Delivery.**

**a.** For orders accepted directly by Imperva, End User shall pay Imperva the applicable fees designated by Imperva. Overage fees may apply if End User exceeds its allowance for any Subscription Services at Imperva's then-current overage rates. Information regarding overage rates is provided at [http://www.imperva.com/products/wsc\\_cloud-web-application-firewall.html](http://www.imperva.com/products/wsc_cloud-web-application-firewall.html). Any fees payable to Imperva are non-refundable and payable in US Dollars. End User shall also pay all sales, use, value-added and other taxes, tariffs and duties of any type assessed against End User, except for taxes based on Imperva's income. Fees shall be invoiced as follows: (a) fees for all Subscription Services and Support shall be invoiced in advance; (b) fees for Software licenses and Appliance purchases will be invoiced upon Delivery. All payments from End User to Imperva are due net thirty (30) days after the date of invoice. If End User's account for Subscription Services or Support is thirty (30) days or more overdue, in addition to any of its other rights or remedies, Imperva reserves the right to suspend such services to End User, without liability to End User, until such amounts are paid in full. Imperva shall have the right to conduct and/or direct an independent accounting firm to conduct, during normal business hours, an audit of End User's facilities, computers and records to confirm End User's use of Products is in compliance with this Agreement. End User shall provide reasonable cooperation with any such audit.

**b.** Imperva will use commercially reasonable efforts to ship the Appliances and the Software license keys at the times requested in Orders (in partial or full shipments); provided, however, that Imperva shall in no event be liable for any delay in Delivery or for failure to give notice of delay. Without liability to any person and without prejudice to any other remedy, Imperva may withhold or delay shipment of any Order if End User is late in payment or is otherwise in default under this Agreement. Title to Appliances and risk of loss shall pass to End User upon Delivery, and Products shall be deemed accepted by End User upon Delivery. Appliances shall be delivered Ex Works (Incoterms 2000) Imperva's designated manufacturing facility. End User may specify shipping instructions with the Order. In the absence of specific shipping instructions from End User, Imperva will ship by the method it deems most advantageous. End User shall pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums incurred by Imperva in connection with the shipment of Appliances to End User. In its discretion, Imperva may advance shipping charges on behalf of End User on Appliances shipped to End User, and End User agrees to reimburse Imperva for any such advanced charges and expenses.

**7. Confidentiality.**

**a.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, the Products, their performance (including any benchmarking information) and Imperva's pricing of the Products and Services. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**b.** The Receiving Party agrees that it will (i) use Confidential Information for the sole purpose of exercising its rights and performing its obligations under this Agreement, (ii) divulge Confidential Information only to those of its employees, directors, independent consultants or agents who have a need to know such Confidential Information and who are bound by professional duty or in writing (in advance) to confidentiality and non-use obligations at least as protective of such information as this Agreement, and (iii) not disclose any Confidential Information to any third party. The Receiving Party shall notify and cooperate with the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. End User acknowledges, understands and agrees that Imperva may, as part of its provision of the Product

and/or Services to End User, collect, store and use information obtained from End User, including, but not limited to, information about End User's users and customers ("**Information**") for the purposes of the provision of the Product, Services and other services to End User and may use such information for analysis and improvement of Imperva's products and services. End User represents and warrants that it has all rights and permissions necessary to grant Imperva access to such Information as contemplated herein.

c. Upon termination of this Agreement for any or no reason, the Receiving Party shall (i) immediately cease all use of the Disclosing Party's Confidential Information, (ii) at the instruction of the Disclosing Party, either promptly destroy all Confidential Information of the Disclosing Party or return all Confidential Information of the Disclosing Party.

d. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

## **8. Proprietary Rights; Indemnity.**

a. All title and intellectual property rights in and to the Products are owned exclusively by Imperva and its partners and suppliers. Other than as expressly set forth in this Agreement, no license or other rights in or to the Products and intellectual property rights thereto are granted to End User, and all such licenses and rights are hereby expressly reserved. Any ideas, suggestions, modifications and the like made by End User with respect to a Product will be the property of Imperva regardless of whether Imperva chooses to exercise its rights to incorporate such ideas, suggestions or modifications into the Product.

b. Subject to the remainder of this Section 8.b, Imperva will defend End User against any third party claim that the Product as delivered infringes a U.S. patent or any copyright, or misappropriates any third party trade secrets ("**Infringement Claim**") and indemnify End User from the resulting costs and damages awarded against End User to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed in settlement; provided that End User (1) promptly notifies Imperva of any and all threats, claims and proceedings of such Infringement Claim, (2) gives reasonable assistance in response to Imperva's request for assistance, and (3) grants Imperva sole control over defense and settlement thereof. The foregoing obligations do not apply with respect to Products or portions or components thereof, (i) that are modified after delivery by Imperva, (ii) combined with other products, processes or materials, where the alleged infringement relates to such combination, (iii) where End User continues allegedly infringing activity after being notified thereof or modifications that would have avoided the alleged infringement have been made available to End User, or (iv) where End User's use of such Product is not strictly in accordance with this Agreement. In the event that Products are held to or believed by Imperva to infringe, Imperva at its discretion, will have the option to (A) modify the allegedly infringing Products to be non-infringing, (B) obtain for End User a license to continue using the Products, or (C) request the return of the Product and upon receipt thereof terminate this Agreement as to the infringing Product and refund to End User the unused portion of the fees paid under this Agreement for such infringing Product, depreciated on a straight-line basis over a three (3) year period. End User will defend, indemnify and hold Imperva harmless against any claims, damages settlements and expenses (including attorneys' fees) excluded from Imperva's indemnity obligations in (i) – (iv) above. THIS SECTION SETS FORTH IMPERVA'S SOLE OBLIGATION AND END USER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF VIOLATION OF THIRD PARTY RIGHTS.

## **9. Warranty and Disclaimer.**

a. Imperva warrants that during the sixty (60) day period commencing on the date of first Delivery, the Software and the Appliances will perform substantially in accordance with their Documentation. In the event of a breach of the foregoing warranty with respect to the Software, as End User's sole and exclusive remedy, Imperva shall, at its sole expense, use reasonable efforts to modify the Software, so that it performs substantially in accordance with its Documentation. In the event of a breach of the foregoing warranty with respect to an Appliance, as End User's sole and exclusive remedy, Imperva shall, at its sole expense and at its option, repair the Appliance or replace the Appliance with a new or reconditioned Appliance that performs materially in accordance with its Documentation. The foregoing warranty extends only to the original purchaser and will not apply to the misuse of or damage to the Products. The rights and remedies granted End User under this Section state Imperva's entire liability, and End User's exclusive remedy, with respect to any breach of the warranty set forth in this Section 9(a).

b. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9(a), THE PRODUCTS OR SERVICES ARE PROVIDED "AS IS" AND IMPERVA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IMPERVA, ITS PARTNERS AND SUPPLIERS MAKE NO WARRANTY THAT USE OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR DEFECT-FREE, OR AVAILABLE AT ALL TIMES. IMPERVA HEREBY SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS

PARTNERS AND SUPPLIERS, ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**10. Limitations of Liability.** IN NO EVENT WILL END USER'S OR IMPERVA'S (AND ITS PARTNERS' OR SUPPLIERS') LIABILITY FOR DIRECT DAMAGES HEREUNDER EXCEED THE TOTAL VALUE OF AMOUNTS TO BE PAID BY END USER FOR THE PRODUCT OR SERVICE AT ISSUE. IN NO EVENT SHALL END USER OR IMPERVA (OR ITS PARTNERS' OR SUPPLIERS') HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES, LOSS OF DATA OR USE, INTERRUPTION OF THE SERVICES, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO END USER WITH RESPECT TO ANY CLAIMS ARISING UNDER SECTION 2 (LICENSES AND RESTRICTIONS), OR TO EITHER PARTY UNDER SECTION 7 (CONFIDENTIALITY).

**11. Term and Termination.**

a. The term of this Agreement will commence upon Delivery of the Products to End User and will continue in effect for such time as End User continues to have the right to access the Products. Support for Software and/or Appliances will automatically renew at the end of the applicable Support term unless either party gives the other at least thirty (30) days' notice of non-renewal prior to the end of the then current term.

b. Either party may terminate this Agreement due to a material breach of this Agreement by the other party if such material breach remains uncured for a period of thirty (30) days following receipt of written notice by the breaching party; provided that Imperva may terminate this Agreement and/or all licenses granted to End User hereunder immediately upon written notice to End User if End User breaches any provision of Section 2 (License & Restrictions), Section 4 (Additional Terms for Subscription Services) or Section 7 (Confidentiality).

c. Upon the earlier of expiration of End User's rights or termination of the Agreement, Imperva will cease providing Subscription Services, Support and Professional Services, and each party shall promptly return or destroy the other party's Confidential Information. Termination shall not relieve End User of the obligation to pay any fees accrued or payable to Imperva prior to the effective date of expiration or termination. The following sections shall survive termination of this Agreement: Sections 2(c), 2(d), 2(f), 4, 6 -12, and 16.

**12. Compliance with Laws; Export.** End User acknowledges that the Software contains encryption technology that is subject to export restrictions by the U.S. government and import restrictions by certain other governments. End User will not and will not allow any third-party to remove or export from the U.S. or allow the export or re-export of any part of the Software or any direct product thereof: (i) into (or to a national or resident of) Cuba, Iran, North Korea, Sudan or Syria (to the extent the U.S. government or any agency thereof restricts export or re-export to such countries); (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or foreign agency or authority. End User agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. End User agrees to indemnify and hold Imperva, its partners and suppliers harmless against any claims, losses or expenses arising out of End User's breach of this Section 12.

**13. End User Mention.** End User consents to Imperva using its name and logo to identify End User as a customer of Imperva, such as use on Imperva's web site. Any use shall be subject to Imperva complying with any guidelines that End User may deliver to Imperva from time-to-time regarding the use of its name and logo. This consent terminates upon termination of this Agreement.

**14. Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

**15. Evaluation.**

**a. Evaluation Product.** If the order is for End User to evaluate Product and its related Documentation on a temporary basis for non-commercial use in a non-production environment ("Evaluation Product") and Imperva agrees to such evaluation, conditioned on End User's compliance with the terms and conditions of this Agreement, Imperva grants to End User during the Evaluation Period (as defined below), a cost-free, nonsublicensable, nontransferable, nonassignable and nonexclusive, revocable license to use the Evaluation Product, solely at the location identified in writing by End User and solely for End User's internal evaluation of the Evaluation Product. End User may only grant access to the Evaluation Product to employees, contractors, agents or consultants who are bound to confidentiality and non-use obligations no less protective of Imperva's proprietary rights than this Agreement. Notwithstanding anything to the contrary as stated in this Agreement, all worldwide right, title and interest to the Evaluation Product, and all intellectual property rights in and to them, are and will remain the exclusive property of Imperva.

**b. Evaluation Period.** Unless otherwise agreed to by the parties in writing or terminated earlier in accordance with this Agreement, an evaluation shall commence upon delivery of the Evaluation Product and continue for thirty (30) days thereafter ("Evaluation Period"). Upon the expiration or termination of the Evaluation Period, (i) all licenses granted under this Section 15 for such evaluation will cease, and (ii) End User will immediately return the Evaluation Product to Imperva and destroy or erase any intangible copies of the Evaluation Product, and certify in a writing signed by an officer of End User and delivered to Imperva that all such copies of have been returned, destroyed or erased.

**c. Additional Evaluation Terms.** Notwithstanding anything to the contrary as contained in this Agreement, End User acknowledges and agrees that the Evaluation Product is provided for evaluation "AS-IS" and Imperva and its suppliers make no representations or warranties of any kind, express or implied, with respect to the Evaluation Product, including, without limitation, any implied warranties of merchantability, title, fitness for a particular purpose, informational content, system integration, enjoyment, non-infringement or any other warranties arising out of course of dealing, usage or trade, and no obligation under Section 8.b (Indemnity) shall arise with respect to an Evaluation Product.

**16. Miscellaneous Provisions.** The parties are independent contractors under this Agreement and nothing in this Agreement authorizes a party to act as an agent of the other or bind the other to any transaction or agreement. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement in whole or in part by operation of law or otherwise, without the other party's prior written consent. Any attempt to transfer or assign this Agreement without such written consent will be null and void. Notwithstanding the foregoing, however, Imperva may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which Imperva is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of Imperva's assets. Imperva's licensors are intended third party beneficiaries of this Agreement. In the event any provision of this Agreement shall be determined to be invalid or unenforceable under law, all other provisions of this Agreement shall continue in full force and effect. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written between the parties with respect to said subject matter. This Agreement may be modified or waived only in a written instrument signed by both parties. A waiver of any breach under this Agreement shall not constitute a waiver or any other breach or future breaches. Notwithstanding the foregoing, if a separate, written and mutually signed agreement for the acquisition of the Products and/or Services exists between End User and Imperva, the terms of that written agreement (excluding any pre-printed terms of any purchase order, confirmation or similar document, all of which will have no effect and will not be considered agreed to by Imperva) shall take precedence over this Agreement. All notices, requests, demands and other communications hereunder shall be in writing to the address set forth below for Imperva and on the applicable order for End User and shall be deemed to have been duly given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered mail (return receipt requested); or (iii) two (2) days after it is sent if by overnight delivery by a major commercial delivery service. This Agreement will be interpreted and construed in accordance with the laws of the State of California and the United States of America, without regard to conflict of law principles. The parties hereby consent to the exclusive jurisdiction and venue of the state and federal courts located in Santa Clara County, California for resolution of any disputes arising out or relating to this Agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to this Agreement in any manner whatsoever.

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