



## PROFESSIONAL SERVICES AGREEMENT

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**1. Professional Services; SOWs.** You ("Company") engage Imperva to provide consulting, training and other professional services (the "**Professional Services**") set forth on Statements of Work executed by both parties or orders for standard packaged offerings ("**SOWs**"), each of which shall contain, at a minimum, a reasonably detailed description of the Professional Services to be performed and the fees there for. In the event the individual is entering into this Agreement on behalf of a corporate or other public or private entity, such individual certifies that he/she is an authorized representative of the Company. Each SOW shall be subject to this Agreement. In the event of a conflict between the provisions of this Agreement and an SOW, the relevant provisions of the SOW shall prevail.

**2. Performance of Professional Services.**

(a) Unless otherwise specified on an SOW, all Professional Services shall be performed at Imperva premises. For Professional Services performed at Company's premises, Company shall (a) provide Imperva personnel with reasonable office space and necessary access to hardware and other systems, and (b) comply in all material respects with applicable laws relating to the treatment of Imperva personnel who are on Company's premises.

(b) Company and Imperva will schedule a mutually agreed time for Professional Services delivery. If Company cancels or postpones such time for any reason without providing Imperva at least ten (10) business days advanced written notice, Company will be responsible for fifty percent (50%) of the scheduled Professional Services price for the first week canceled or postponed. Professional Services must be utilized within twelve (12) months from the purchase date and, if not so utilized, Imperva will have no obligation to provide such Professional Services and Company will not be entitled to a refund of any amounts relating thereto.

**3. No Hardware or Licenses to Software.** This Agreement governs only the provision of Professional Services. Any hardware, software, and/or hosted subscription services to be provided by Imperva to Company shall be governed by a separate agreement.

**4. Fees, Payment Terms, Taxes and Expenses.**

(a) In consideration of the Professional Services, Company will pay Imperva (or Imperva's authorized reseller) the fees set forth in each SOW. Imperva's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Company is responsible for paying all Taxes, excluding only taxes based on Imperva's income. If Imperva has the legal obligation to pay or collect Taxes for which Company is responsible under this section, the appropriate amount shall be invoiced to and paid by Company unless Company provides Imperva with a valid tax exemption certificate authorized by the appropriate taxing authority. Company agrees to reimburse Imperva for its reasonable out-of-pocket expenses and costs including travel and lodging incurred in connection with providing the Professional Services under any SOW ("**Expenses**").

(b) Where Company issues a purchase order directly to Imperva, Imperva will invoice Company for (i) Professional Services in arrears on a weekly basis, unless stated otherwise in the applicable SOW, and (ii) all Expenses at actual cost. Company shall pay invoices within thirty (30) days of the date of invoice. Amounts that remain unpaid as of the applicable due date shall accrue interest at the lesser of one percent (1.0%) per month or the maximum rate allowed under applicable law. In addition to any other rights and remedies that Imperva may have, in the event that Customer's payments are more than thirty (30) days past due, Imperva may cease providing the applicable Professional Services until such time as Customer's account is paid in full.

**5. 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 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. Notwithstanding the foregoing, Company acknowledges and agrees that Imperva will, as part of its provision of the Professional Services to Company, collect, store and use information obtained from Company, including, but not limited to, information about Company's users and customers ("**Information**") for the purposes of (i) providing the Professional Services to Company and (ii) analyzing and improving Imperva's Professional Services. Company represents and warrants that Company has all rights and permissions necessary to grant Imperva access to such Information.

(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 and (ii) upon request from the Disclosing Party, either return or destroy 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 5, 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.

## **6. Proprietary Rights.**

(a) Company shall solely own all right, title and interest in and to its Confidential Information. Imperva shall solely own all worldwide right, title and interest in and to its Confidential Information and the Deliverables.

(b) Company will, subject to the terms of this Agreement, have a perpetual, worldwide, non-transferable, non-sublicensable, non-exclusive license to use any Deliverables delivered as part of the Professional Services.

(c) Notwithstanding any other provision of this Agreement: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Imperva to develop the Deliverables, and (ii) the term "Deliverables" shall not include the Tools. To the extent necessary to use the Deliverables, Tools that are delivered with or as part of the Deliverables, are licensed, not assigned, to Company, on the same terms as the Deliverables. As used herein, "Deliverables" shall mean any configurations, reports, and/or written documentation generated for Company in connection with the performance of the Professional Services.

## **7. Warranty and Disclaimer.**

(a) Imperva warrants that the Professional Services shall be performed in a professional and workmanlike manner. In the event of a breach of the foregoing warranty, Imperva shall at its sole option and expense, either: (i) re-perform the applicable Professional Services in a manner that is compliant with such warranty, or (ii) in the event Imperva is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable SOWs and upon such termination, Imperva shall promptly refund Company all fees paid for the non-compliant Professional Services. The rights and remedies granted Company under this Section 7(a) state Imperva's entire liability, and Company's exclusive remedy, with respect to any breach of the warranty set forth in this Section 7(a).

(b) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7(a), IMPERVA MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IMPERVA HEREBY SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS SUPPLIERS, ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. Limitations of Liability.**

(a) IN NO EVENT WILL EITHER PARTY'S (AND ITS SUPPLIERS') LIABILITY FOR DIRECT DAMAGES HEREUNDER EXCEED THE TOTAL VALUE OF AMOUNTS

TO BE PAID UNDER THE SPECIFIC SOW OR SOWS AT ISSUE.

(b) IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, 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.

(c) The limitations and exclusions on liability set forth in Sections 8(a) and 8(b) above shall not apply to damages arising from a breach of a party's obligations of confidentiality under Section 5.

## **9. Term and Termination.**

(a) This Agreement shall commence on the Effective Date and shall remain in effect until the later of (i) ten (10) days following written notice by a party that it wishes to terminate this Agreement and (ii) the date on which all SOWs issued hereunder are completed or terminated in accordance with the terms of such SOW or this Agreement.

(b) Either party may terminate this Agreement or any SOW hereunder immediately upon written notice (i) if the other party fails to perform its material obligations under this Agreement or any SOW and such failure is not corrected within thirty (30) days of written notice of the breach from the non-breaching party; or (ii) in the event the other party breaches any of its obligations of confidentiality as set forth in Section 5. In addition, Imperva may terminate this Agreement or any SOW hereunder in the event Company is more than thirty (30) days past due in its payments to Imperva.

(c) In addition to any payment obligations due by either party to the other party hereunder, the following sections shall survive termination of this Agreement for any or no reason: Sections 4, 5, 6, 7(b), 8, 9(c) and 10.

## **10. Miscellaneous Provisions.**

(a) 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.

(b) 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, either party may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which such party is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of such party's assets.

(c) Throughout the term of this Agreement, Imperva will maintain the following minimum amounts of insurance: (i) workers' compensation at statutory minimums and employers liability with \$1,000,000 each accident, (ii) commercial general liability with a minimum of \$1,000,000 per occurrence and \$2,000,000 general aggregate; (iii) automobile liability for all hired and non-owned automobiles with \$1,000,000 combined

single limit; and (iv) errors and omissions (E&O) coverage at \$5,000,000 policy aggregate. A certificate of insurance evidencing the above will be presented to Company upon Company's written request.

(d) All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed 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. Either party may by like notice specify or change an address to which notices and communications shall thereafter be sent.

(e) 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.

(f) This Agreement will be interpreted and construed in accordance with the laws of the State of California, 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.

(g) 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, together with any SOW executed hereunder, 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. Any additional or inconsistent terms on any purchase order shall be null and void. This Agreement and any SOW 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.