

imPAC Labs Master Services Agreement

THIS imPAC Labs MASTER SERVICES AGREEMENT (“Agreement”) is effective as of the date of execution of any OrderForm (“**Effective Date**”) referencing this Agreement and signed by the purchasing entity (“**Customer**”). This Agreement is entered into by and between _____(Customer) and **imPAC Labs Inc (“Company”)**., a company incorporated in Delaware, having its principal place of business at 2 Ravinia Drive, Suite 980, Atlanta, GA 30346.

imPAC Labs provides cloud security software and expert guidance to help developers uncover potential compliance violations and ensure their applications meet the highest security standards.

Subject to the terms and conditions of this Agreement, Company grants Customer access to the Services as follows:

1. DEFINITIONS

Affiliate	any entity that controls, is controlled by or is under common control with a party. For purposes of this definition, “control” means at least 50% of the capital, assets, voting stock, profits, interests, or similar participation rights are owned or controlled, directly or indirectly by an entity under this definition;
Application	the proprietary software applications made available by imPAC LABS, that are listed on an Order Form and are more particularly described in the Documentation.
Asset	any cloud attribute that has an individual configuration that needs to be managed.
Beta Services	a product, service or functionality that may be made available to Customer to try and which is designated beta, pilot, or early access;
Business Day	a day other than a Saturday, Sunday or federal or national holiday in the applicable jurisdiction.
Compose	Ability to create custom rules and frameworks to establish continuous security control monitoring.
Confidential Information	all non-public information (however recorded or preserved) disclosed by a party to the other party that is conspicuously marked as confidential or would normally be considered confidential information by a reasonable party under the circumstances;
Contributing Developer	an employee, independent contractor or other individual acting for or on behalf of Customer who has contributed to the Protected Asset during a 90-day rolling period by modifying, programming or testing

the Protected Asset;

Customer Data	any data input into the Services by Users for the purpose of using the Services, including the Protected Asset;
Documentation	the information made available to IMPAC LABS 's customers that sets out a description of the Services and instructions for use of the Services;
Evaluation	Policy checks against an asset.
Intellectual Property Rights	all rights to patents, inventions, copyright and related rights, trademarks, business names and domain names, get-up, goodwill, designs, computer software, database rights, including know-how and trade secrets, and all other intellectual property rights;
Issue	a vulnerability in, security misconfiguration of, or other issue with the Protected Asset as identified by the Services based on security rules and controls set within the Services;
Losses	all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers;
Managed Assets	The resources, assets and configuration files managed and observed by IMPAC LABS ASPM, including containers, API calls, and other resources.
Open-Source Software	software with either freely obtainable source code, license for modification, or permission for free distribution, including any code which is licensed under any form of open-source license;
Order Form	IMPAC LABS 's form of ordering document that is signed by the Customer and is incorporated into this Agreement by reference. It specifies the Services and Support to be provided by IMPAC LABS pursuant to this Agreement;
Protected Asset	any source code repository, code file, configuration file, container image, cloud asset, Managed Asset, or other item relating to Customer's software projects stored in Customer's source code manager and used in conjunction with the Services;
Remediation	a fix suggested by the Services in respect of an Issue, which may include a patch, recommended version upgrade, or security setting reconfiguration;
Scan Results	the resultant Customer-specific reports, analyses, or other results that are derived because of the Services scanning and processing Customer Data. Scan Results excludes any Service Data;

Service Data	the IMPAC LABS -generated information and data made available to Customer in connection with the Services, including Issues and Remediations;
Services	the Applications subscribed to by Customer on an Order Form, as well as the related Tools and Service Data;
Subscription Allocation	the limits on the use of the Services set out in an Order Form, including any limit on the number of Contributing Developers or Managed Assets;
Subscription Fees	the fees payable for the Subscription Allocation and any other fees set out in the Order Form;
Support	The support services, including, if applicable, any implementation support, listed on the Order Form, and further described at https://docs.IMPAC LABS .io/more-info/IMPAC LABS -terms-of-support-and-services-glossary .
Time Machine	Ability to quickly understand change in risk posture across any given dates.
Tools	the software applications that enable access to the Services, including the API, CLI tool or Broker;
Users	those Contributing Developers, employees, independent contractors or other individuals acting for or on behalf of Customer or Customer's Affiliates, who are authorized by Customer to access the Services; and
Vault	A platform that documents and tracks the details of your cloud infrastructure configurations.
Virus	any software, code, file or program that is intended to adversely affect the operation of any computer software, hardware or network, including malware, worms and Trojan horses.

1. RIGHT TO USE

Subject to the terms and conditions, IMPAC LABS grants Customer a non-exclusive, non-transferable, non-assignable (subject to Section 11.9), non-sublicensable right to: access and use the “**imPAC**” cloud security platform on a SaaS basis. This license is for internal use only and is valid only during the specified subscription term. **Unless stated otherwise, “imPAC” includes all updates and related materials, such as user manuals and SLAs.** The Customer can only use the Platform as described in the documentation and any applicable Order forms. This use is subject to limitations specified in the Order form and applicable laws. **Order forms are part of this Agreement.** If there's a conflict between the Agreement and an Order form, the Agreement generally takes precedence, unless the Order form specifically states otherwise.

2. RESTRICTIONS ON USE AND CUSTOMER OBLIGATIONS

2.1 Restrictions on Use. Customer shall not:

- a. Intellectual Property: Copy, modify, create derivative works of, reverse engineer or distribute any part of the Platform (including by incorporating it into its products).
- b. Transfer of Rights: Sell, license (or sub-license), lease, assign, transfer, pledge, or share Customer's rights under this Agreement with any third party. Open-Source Software: Use any "open source" in a manner that would require ImPAC to disclose the source code of the Platform to any third party.
- c. Upload any Virus; or (d) any material that is illegal or infringes any third-party Intellectual Property Right;
- d. Open-Source Software: Use any "open source" in a manner that would require ImPAC to disclose the source code of the Platform to any third party.
- e. Benchmarking and Testing: Disclose the results of any testing or benchmarking of the Platform to any third party

- f. Reverse Engineering: Disassemble, decompile, reverse engineer, or attempt to discover the Platform's source code or underlying algorithms.
- g. Competitive Use: Use the Platform for any competitive-to-ImPAC use or in a manner that violates or contravenes any rights of any third party.
- h. Circumvent or disable any security or other technological features of the Services
- i. (i) Perform any actions that would interfere with the proper working of the Services or prevent access to or use of the Services by IMPAC LABS 's other.

2.2 Beta Software.

If imPAC releases any non-commercial or beta software product, imPAC Labs is not responsible for any liability.

2.3 Customer Obligations.

Customer has the obligation to set up access right for their users, ensure Users use the product, accordingly, comply with all the applicable laws and regulations based on this Agreement complying with the laws of US and other countries where it is applicable.

3. **IMPAC LABS 'S OBLIGATIONS, WARRANTIES, AND DISCLAIMERS**

IMPAC LABS shall be responsible to meet the SLAs as defined in Schedule 1, and provide Support based on the Order Form

3.1 Insurance. IMPAC LABS agrees to maintain the following amounts of insurance during the term of this Agreement:

- a. 2 million USD in commercial general liability, per occurrence and in the aggregate.
- b. 1 million USD in errors and omissions/professional liability, per occurrence and in the aggregate; and,
- c. 2 million USD in cyber- liability insurance, per occurrence and in the aggregate.
- d. Upon receipt of a written request, IMPAC LABS will provide Customer with a copy of its certificate of insurance evidencing the foregoing coverage.

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3.2 Performance Warranty, Disclaimer.

(a) Customer as well as imPAC, each warrant that it is a legally formed entity under the laws of its jurisdiction and does not violate any applicable laws.

ImPAC warrants that, under normal authorized use, the **Platform** will substantially perform as described in its Documentation. imPAC also warrants that the Services and Platform may or may not include open-source software that restricts Customer's ability to use them or requires Customer to disclose, license, or make available any proprietary source code. If the Platform fails to perform as warranted, imPAC will use commercially reasonable efforts to repair it. If ImPAC cannot repair it within 30 days, Customer may terminate this Agreement and receive a pro-rata refund for any unused portion of the Term. The warranty does not apply if the Platform's failure is caused by:

- Repairs, maintenance, or modifications by unauthorized persons.
- Accidents, negligence, abuse, or misuse by Customer or Permitted Users.
- Use of the Platform in a manner not specified in the Documentation.
- Combining the Platform with unauthorized or non-imPAC equipment or software.

imPAC is not liable for inaccuracies in the Service's output, delays, or unavailability caused by:

- Customer's internet access or telecommunications network issues.
- Insufficient power or transportation facilities.

- Incompatibility between Customer's systems and the Platform appliance.
- Maintenance within Customer's systems affecting the Platform's operation.

Except as expressly stated in this agreement, to the extent permitted by applicable law, the platform, its related services, and any output resulting from the use of the platform are provided on an "as is" and "as available" basis. imPAC does not warrant that:

-the platform and/or the services will meet the customer's requirements.

-the platform will not operate error-free.

imPAC expressly disclaims all other express warranties and all implied warranties, including merchantability, title, non-infringement, non-interference, and fitness for a particular purpose.

imPAC is not responsible for any warranties or representations made by any other partner of the customer as it relates to the services, and such warranties and representations are the sole responsibility of such partner.

3.4 To the maximum extent permitted by law.

(a) Neither party, nor their affiliates, shall be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of revenue, reputation, profits, data, or data use, except for ImPAC's indemnification obligations and any damages resulting from Customer's misuse of the subscription or infringement of ImPAC's intellectual property rights.

(b) Neither party, nor their affiliates, shall be liable for any damages arising out of or related to this agreement, including its exhibits, whether in contract or tort, or otherwise, that exceed the total amounts actually paid to ImPAC by Customer in the twelve (12) month period immediately preceding the event giving rise to such claim. This limitation does not apply to ImPAC's indemnification obligations under Section 11 or to damages resulting from Customer's misappropriation or infringement of ImPAC's intellectual property rights.

(c) imPAC labs does not warrant that the services will meet Customer's requirements or will be fit, imPAC will be able to find and monitor all issues in all code, confirmations or dependencies included in, applicable to, or used by the Protected Asset; and imPAC Labs will not be able to provide Remediation for all issues; or, a Remediation will not break the functionality of the Protected Asset or will not result in the introduction of new issues.

3.5 Customer Responsibility.

The Platform may only be accessed by Customer's authorized employees, its Affiliates' authorized employees, or service providers who have been explicitly authorized by Customer (each, a "Authorized User"). The customer is responsible for ensuring that the Users always comply with the terms of this Agreement and shall be liable for any breach of this Agreement by an Authorized User.

Customer further acknowledges that remediations and issues are provided for general info only and the Customer should be aware that it is not intended to amount of advice on which customer should rely upon.

Customer must promptly notify imPAC of any unauthorized access to or use of the Platform. An "Affiliate" of imPAC is any entity that directly or indirectly controls, is controlled by, or is under common control with imPAC. Similarly, an "Affiliate" of Customer is any entity that directly or indirectly controls the Customer. For this definition, "Control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or the ability to make decisions on behalf of the subject entity without requiring additional approval(s).

3.6_ Third Party Risks. Any operation or transaction completed via any third-party website, system, platform or application is between the Customer and the relevant third party. Because IMPAC LABS cannot guarantee the continued availability of such features, IMPAC LABS may cease providing interoperability with them at any time, including if the relevant third-party ceases to make its application or service available for interoperation with the Services or changes the way it does so in a way that is not reasonably acceptable for IMPAC LABS.

3.7 Consulting Services. Customer may opt to purchase consulting services to be provided on a time and materials basis as mutually agreed upon in a statement of work signed by both parties ("**Consulting Services**"). The statement of work may include terms that amend or supplement the terms in this Agreement as those terms specifically apply to IMPAC LABS 's or, if applicable, its third-party partners', delivery of the Consulting Services.

4. DATA PROCESSING ADDENDUM, SECURITY ADDENDUM AND AUDIT RIGHTS

4.1 Data Processing Addendum. To the extent that imPAC Labs processes Personal Data on Customer's behalf when performing its obligations under this Agreement, the Data Processing Addendum (the "**DPA**") will apply and form part of this Agreement.

4.2 Information Security Addendum. imPAC Labs will employ security measures designed to protect Customer Data in accordance with the imPAC Labs Information Security Addendum and will maintain its SOC2 certification, or equivalent successor standards, for the duration of the Agreement.

4.3 Audit Rights. imPAC Labs will cooperate with reasonable written requests by Customer for documentary audits of IMPAC LABS 's security and privacy practices. The time, duration, place, scope, and manner of the audit must be mutually agreed on by the parties, but in no event will an audit be conducted more frequently than once per year. Upon receipt of a written request, IMPAC LABS will make copies of its standard security questionnaire (e.g. SIG Lite and/or CAIQ) and any summary copies of third-party audit reports or evidence of certifications it maintains that apply to the Services available to Customer. If a regulator of the customer wishes to carry out an audit of imPAC Labs or its activities under the Agreement, Customer will provide imPAC LABS with no less than 30 days' written notice, unless the regulator has given less notice to Customer. IMPAC LABS will reasonably cooperate with the regulator in support of any such audit.

4.4 Security Incident and Notification Obligations. In the event of an actual unauthorized or unlawful destruction, loss, alteration, disclosure of, or access to, Customer Confidential Information (a "**Security Incident**"), imPAC Labs will, without undue delay (and in any event within 72 hours), notify Customer of the Security Incident, advise on the nature and extent of the security incident, to the extent known at the time of notification and take reasonable action to investigate and remediate the Security Incident. In addition, imPAC Labs will provide reasonable assistance to Customer (and any law enforcement or regulatory official) to fulfil Customer's obligations under applicable law to investigate and respond to the Security Incident.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 imPAC Lab's Intellectual Property Rights. All rights, title, and interest in and to the Services, including all Intellectual Property Rights therein, are and will remain, with IMPAC LABS and/or its licensors. Customer has no right, license, or authorization with respect to any of the Services except as expressly set out in this Agreement.

5.2 Customer's Intellectual Property Rights. As between Customer and IMPAC LABS, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, Protected Asset and Scan Results, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 6.3 (Grant of Rights to IMPAC LABS).

5.3 Grant of Rights to IMPAC LABS. Customer hereby grants all such rights and permissions in or relating to Customer Data and the Protected Asset as are necessary to enable IMPAC LABS to perform the Services and otherwise exercise its rights and obligations hereunder. All written or oral comments, ideas and suggestions made by Users to IMPAC LABS regarding the Services or Beta Services (including regarding product experience, functionality, performance, accuracy, consistency and ease of use of the Services) ("**Feedback**") may be freely utilized by IMPAC LABS without attribution or compensation of any kind to Customer. Customer hereby irrevocably transfers and assigns to IMPAC LABS all Intellectual Property Rights embodied in, or arising in connection with, such Feedback.

1. **Non-Disclosure:** Each Party may have access to certain non-public information of the other Party, including trade secrets and other proprietary, confidential, or competitively sensitive information (Confidential Information). The receiving Party will use the same level of care to protect the disclosing Party's Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care. The receiving Party's obligations under this Section do not apply to Confidential Information that:

- was already known to the receiving Party before disclosure.
- Was disclosed to the receiving Party by a third party with the right to disclose it without confidentiality restrictions.
- Is, or becomes, publicly available through no fault of the receiving Party.
- Was independently developed by the receiving Party without access to or use of the disclosing Party's Confidential Information.

5.4 Neither Party shall use or disclose the other Party's Confidential Information except as necessary to perform its obligations under this Agreement. The receiving Party shall only permit access to Confidential Information to its employees, consultants, affiliates, service providers, agents, and subcontractors who have a need to know and are bound by confidentiality obligations at least as strict as those in this Agreement (Authorized Recipients). The receiving Party is responsible for its Authorized Recipients' compliance with these confidentiality obligations. The receiving Party may disclose Confidential Information if required by law or court order, provided it notifies the disclosing Party to allow them to seek a protective order or restrict the disclosure. Each Party may disclose the terms and existence of this Agreement to third parties for due diligence purposes, subject to those third parties being bound by confidentiality obligations at least as strict as those in this Agreement. All rights, title, and interest in Confidential Information remain the sole and exclusive property of the disclosing Party.

6. SUBSCRIPTION FEES

6.1 Subscription Fees and Audit. The customer agrees to pay the Subscription Fees set out the Order Form for the duration of time set forth therein (the “**Term**”). IMPAC LABS verifies its customers’ use of the Services on a quarterly basis to ensure compliance with the Subscription Allocation. In the event such verification reveals that the number of Contributing Developers or Managed Assets, as applicable, exceeds the Subscription Allocation, Customer must reduce its usage of the Services to the amounts set out in the Subscription Allocation within 30 days of becoming aware of the overage, failing which, IMPAC LABS may invoice Customer for the associated additional Subscription Fees as priced in the Order Form for the remainder of the then-current Term. If Customer purchases additional Subscription Allocations part way through a Term, Subscription Fees shall be pro-rated for the remainder of the then-current Term.

6.2 Invoices. IMPAC LABS will invoice the Customer in accordance with the billing frequency and payments terms on the Order Form and the Customer will pay each invoice per such terms. If billing frequency and payment terms are omitted from the Order Form, IMPAC LABS ’s default billing frequency is annual, and the payment term is net 30 from the date of the invoice. If IMPAC LABS has not received payment by the due date, IMPAC LABS will notify Customer of the default and, without prejudice to any other rights and remedies of IMPAC LABS, IMPAC LABS may disable Customer's access to all or part of the Services if payment has not been made within 10 Business Days of the date of the notice of default.

6.3 Committed Subscription Fees and Taxes. All Subscription Fees are: (a) non-cancellable and non-refundable.

(b) payable in US Dollars; and (c) exclusive of any applicable taxes. Customer is required to pay and bear any sales, use, value-added, goods and services, withholding, or similar taxes or duties, whether domestic or foreign, related to the transactions under this Agreement, other than taxes based on the income of IMPAC LABS. Customer will pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding. If withholding is required under the laws of any relevant tax jurisdiction, withholding will be applied at the lowest applicable rate including the reduced rate of withholding under any tax treaty. The Customer will also provide IMPAC LABS with a copy of the withholding tax certificate or other applicable documentation as proof of payment.

6.4 Renewal Subscription Fee Increases. Unless otherwise set forth on the Order Form, IMPAC LABS may increase the Subscription Fees for each Renewal Term by no more than 5% over the prior year’s Subscription Fees rate for the applicable Services.

7. CONFIDENTIALITY AND NON DISCLOSURE

7.1 Each party (“**Recipient**”) will be given access to Confidential Information from the other party (“**Discloser**”) to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the Recipient; (b) was in the Recipient's lawful possession before the disclosure; (c) is lawfully disclosed to the Recipient by a third party without restriction on disclosure; or, (d) is independently developed by the Recipient without reference to, or reliance on, the Confidential Information of the Discloser, which independent development can be shown by written evidence. Customer’s Confidential Information includes Customer Data and Scan Results. IMPAC LABS ’s Confidential Information includes the Services, Service Data, product roadmaps, pricing and the results of any performance tests of the Services. The terms of this Agreement are confidential to both parties.

7.2 Each Recipient may disclose Confidential Information to the extent necessary to comply with applicable law or a court order, provided that prior to any such disclosure, the Recipient will, to the extent legally permissible, provide to the Discloser notice of such request and use

reasonable efforts to ensure that all Confidential Information so disclosed is treated confidentially.

7.3 Each Recipient will hold the Discloser's Confidential Information in confidence and, unless required by law and disclosed pursuant to Section 8.2, not make the Discloser's Confidential Information available to any third party or use the Discloser's Confidential Information for any purpose other than as set out in this Agreement. The foregoing will not apply with respect to any Confidential Information three (3) years after the termination or expiration of this Agreement (or, with respect to trade secrets, once such Confidential Information no longer constitutes a trade secret under applicable law).

7.4 Notwithstanding any provision of this Agreement, Recipient may disclose Discloser's Confidential Information, in whole or in part (i) to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives, collectively, with the foregoing, "**Personnel**") who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations, or, in the case of professional advisers, are bound by ethical duties, to keep such Confidential Information confidential consistent with the terms of this Agreement. Recipient is responsible and liable for its Personnels' compliance with this Section 8, as if their actions or inactions were an action or inaction of Recipient.

8. INDEMNITY

8.1 Customer Indemnity. Customer shall defend, indemnify, and hold harmless IMPAC LABS, its Affiliates, and each of its and their officers, directors, employees, consultants, agents, successors and assigns from and against all Losses incurred from a third-party claim arising out of Customer's: (a) fraud, gross negligence or willful misconduct; or (b) breach of Section 3.1 (Restrictions on Use).

8.2 IMPAC LABS Indemnity. IMPAC LABS shall defend, indemnify and hold harmless Customer, its Affiliates, and each of its and their officers, directors, employees, consultants, agents, successors and permitted assigns, from and against all Losses incurred from a third-party claim: (a) arising out of IMPAC LABS 's fraud, gross negligence or willful misconduct; or (b) that the Services infringe such third party's Intellectual Property Rights.

8.3 Indemnification Procedure. Each party will promptly notify the other party in writing of any claim for which such party believes it is entitled to be indemnified pursuant to this Section 9. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee shall not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Indemnitor. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. Neither party may settle a claim that results in liability or admission of liability by the Indemnitee without the Indemnitee's written consent, which shall not be unreasonably withheld or delayed. The Indemnitee's failure to perform any obligations under this Section 10.3 will not relieve the Indemnitor of its indemnification obligations, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced because of such failure.

8.4 Mitigation. If any of the Services are, or in IMPAC LABS 's reasonable opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's use of the Services is enjoined or threatened to be enjoined, IMPAC LABS may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services materially as contemplated by this Agreement; (b) modify or

replace the Services, in whole or in part, to seek to make the Services (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services under this Agreement; or, (c) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the Services, provided that Customer will be entitled to a refund of any pre-paid Subscription Fees for Services not delivered as of the termination date.

8.5 Exclusions. In no event shall IMPAC LABS, its Affiliates, and each of their employees, agents and sub-contractors have any liability or obligation under Section 9.2 to the extent the claim arises out of: (a) a modification of the Services by customer; (b) any breach of Customer's obligations under this Agreement or Customer's use of the Services in a manner contrary to the Documentation; (c) Customer's use of the Services in combination with other products, services, data, or processes not recommended or provided by IMPAC LABS, where the alleged infringement would not have occurred in the absence of such use; (d) Customer's use of the Services after notice of the alleged or actual infringement from IMPAC LABS or any appropriate authority; or, (e) any Open Source Software included within the Services.

8.6 Exclusive Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND IMPAC LABS 'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9. LIMITATION OF LIABILITY

9.1 EXCLUSIONS FROM LIABILITY. EXCEPT AS PROVIDED IN THIS AGREEMENT: (A) CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE SERVICES BY THE CUSTOMER, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. IMPAC LABS SHALL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO IMPAC LABS BY CUSTOMER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY IMPAC LABS AT CUSTOMER'S DIRECTION; (B) ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT; AND, (C) THE SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS.

9.2 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.4, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 LIMITATION ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN 10.4, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL SUBSCRIPTION FEES PAID OR PAYABLE TO IMPAC LABS UNDER THIS AGREEMENT FOR THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE

FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

- 9.4 **EXCEPTIONS.** THE EXCLUSIONS AND LIMITATIONS IN SECTIONS 10.1 – 10.3 SHALL NOT APPLY TO: (A) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9; (B) A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILFUL MISCONDUCT; (C) LOSSES FOR DEATH OR BODILY INJURY; OR (D) LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY IMPAC LABS TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 10 (LIMITATION OF LIABILITY) WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT

10. TERM AND TERMINATION

- 10.1 **Term.** This Agreement will, unless otherwise terminated as provided in Section 11.2 (Termination) or Section 8.4 (Mitigation), commence on the date of this Agreement and shall continue so long as there is an Order Form in effect. Unless otherwise terminated by either party in accordance with the terms of this Agreement, the term of each Order Form will (unless otherwise specified in the Order Form) be 3 years from the date specified in the Order Form as the start date of Customer's subscription to the Services (the "**Initial Term**") and, thereafter, unless either party provides the other party with written notice of non-renewal at least 60 days prior to the end of the then current Term, shall renew automatically for successive 3 year periods (each a "**Renewal Term**"). The Initial Term together with any Renewal Term(s) shall constitute the Term of the Order Form.
- 10.2 **Termination.** Without affecting any other right or remedy available to it, either party may terminate this Agreement or an Order Form with immediate effect by giving written notice to the other party if: (a) Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment (though termination does not relieve Customer of its payment obligation); (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or, if such breach is remediable, the breaching party fails to remedy that breach within a period of 30 days after being notified in writing to do; (c) the other party ceases to function as a going concern or to conduct operations in the normal course of business; or, (d) the other party has a petition filed by or against it under any bankruptcy or insolvency laws which petition has not been dismissed or set aside within sixty (60) days of filing.
- 10.3 **Effect of Termination.** On termination or expiry of this Agreement for any reason:
- (a) the rights granted under Section 2 (Grant of License) shall immediately terminate except that Customer may continue to use (in accordance with the restrictions on use set out in this Agreement) Service Data and Scan Results provided to it prior to termination or expiry of this Agreement. Any such use continued use of the Service Data and Scan Results shall be entirely at the risk of the Customer.
 - (b) Customer must delete Customer's organization and projects from the Services by either activating the delete button in the Services or contacting IMPAC LABS 's support team for deletion assistance.
 - (c) Customer shall immediately uninstall all Tools from all computer equipment in its possession or control; and,

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

11. GENERAL

11.1 Interpretation. Headings are for reference only and do not affect the interpretation of this Agreement. Capitalized terms have the meanings indicated in the Agreement unless the context otherwise requires, which meaning will be equally applicable to both the singular and plural forms of such terms. The words "include," "includes," and "including" are deemed to be followed by the words "without limitation".

11.2 Force Majeure. IMPAC LABS shall have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of IMPAC LABS or any other party), epidemic, pandemic, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that Customer is notified of such an event and its expected duration.

11.3 Survival. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

11.4 Severance. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

11.5 Rights and Remedies. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

11.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 Amendment. No amendment or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

11.8 Entire Agreement. This Agreement, and any Order Forms, exhibits, schedules, attachments, and appendices referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between the parties relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

11.9 Assignment. Neither party may assign or transfer this Agreement or any performance rights or obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, no consent is required for either party to assign this Agreement in its entirety to an Affiliate or to a successor of all or substantially all its assets through merger, reorganization, consolidation, or acquisition, provided that the assigning party provides notice of the assignment to the other party. No assignment shall relieve the assigning party of any of its obligations hereunder incurred prior to the assignment. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.10 No Partnership or Agency. Nothing in this Agreement is intended to or will operate to create a partnership between the parties, or authorize either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

11.11 Third Party Rights. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

11.12 Notices. Any notice required to be given under this Agreement shall be in writing and sent by email to the other party's email address as set out above in this agreement (or such other email address as the other party may have notified. A notice sent by email shall be deemed to have been received at the time of transmission.

11.13 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, excluding its conflicts of laws rules and each party irrevocably agrees that they shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement only via mediation.

SCHEDULE 1
SERVICE LEVEL AGREEMENT
("SLA")

1. IMPAC LABS shall endeavor to ensure that the Services are available to the Customer 99.9% of the time. If the Services availability falls below 99.9% in any calendar month, IMPAC LABS will provide Customer the Service Credit as described below.

Monthly Uptime Percentage	Service Credit
Below 99.9% but above 98.0%	Two days of Services credited to Customer's account
Below 98.0% but above 95.0%	5 days of Services credited to Customer's account
Below 95.0%	10 days of Services credited to Customer's account

2. If Monthly Uptime Percentage is below 95% for: (a) three consecutive months; or, (b) any three months during any twelve-month period; then, in addition to the 10-day Service Credit referenced above, Customer will also have the right to terminate the Agreement upon 10 Business Days' written notice to IMPAC LABS.
3. The aggregate maximum number of Service Credits the Customer can claim for Downtime periods that occur in a single calendar month shall not exceed the equivalent of 10 days of Services being added to Customer's account.
4. This SLA does not apply to any unavailability of the Services caused by: (a) the acts or omissions of the Customer.
(b) the failure or malfunction of equipment, applications or systems not owned or controlled by IMPAC LABS ; (c) any inconsistencies or changes in Customer's source environment, including either intentional or accidental connections or disconnections to the environment; (d) Customer Data; (e) Force Majeure events; (f) any suspension of the Services in accordance with the terms of the Agreement; (g) Customer using the Services in a manner inconsistent with the Documentation; (h) Scheduled Downtime; or, (i) Emergency Downtime.
5. The Customer must request the applicable Service Credit by written notice to IMPAC LABS within sixty (60) days of an event which gives rise to Service Credits as outlined in the table above. Customer waives any right to Service Credits not requested within this time period. All performance calculations and applicable Service Credits are based on IMPAC LABS 's records and data unless Customer can provide IMPAC LABS with clear and convincing evidence to the contrary.
6. The provision of Service Credits and the right to terminate pursuant to Section 2 of this SLA shall be Customer's exclusive remedy, and IMPAC LABS 's entire liability, for IMPAC LABS 's failure to adhere to this SLA.

7. DEFINITIONS

The following definitions apply to this SLA:

Downtime: in each calendar month, the number of minutes during which the proportion of failed API responses to user requests, calculated as part of the overall API responses to user requests, exceeds five percent. IMPAC LABS tracks its API responses and monitors their success rate by counting the failed responses as part of the overall response count. Downtime does not include Emergency Downtime or Scheduled Downtime.

Emergency Downtime: those times where IMPAC LABS becomes aware of a vulnerability or other issue which, based on a risk assessment of the vulnerability, IMPAC LABS determines requires immediate remediation and, as a result, the Services are made temporarily unavailable for IMPAC LABS to address the vulnerability.

Monthly Uptime Percentage: the total number of minutes in the calendar month minus the number of minutes of Downtime suffered in the calendar month, divided by the total number of minutes in the calendar month.

Scheduled Downtime: those times where IMPAC LABS notifies Customer of Downtime 72 hours prior to the commencement of such Downtime, provided that IMPAC LABS will use commercially reasonable efforts to: (a) utilize no more than 3 hours of Scheduled Downtime per quarter; and (b) carry out Scheduled Downtime at low traffic times.