

## ACUNETIX SUBSCRIPTION SERVICES AGREEMENT

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS ACUNETIX SUBSCRIPTION AND SERVICES AGREEMENT (THIS “AGREEMENT”). BY SIGNING AN ORDER FORM INCORPORATING THIS AGREEMENT, CLICKING “I ACCEPT”, CLICKING “CREATE”, PROCEEDING WITH THE INSTALLATION AND/OR ACCESS AND USE OF THE ACUNETIX SOLUTION, OR USING THE ACUNETIX SOLUTION AS AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY NAMED ON THE APPLICABLE ORDER FORM ON WHOSE BEHALF YOU INSTALL AND/OR USE THE ACUNETIX SOLUTION, YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND, AND ACCEPT THIS AGREEMENT WITH ACUNETIX LIMITED, A COMPANY DULY INCORPORATED IN MALTA WITH ITS REGISTERED OFFICE AT LEVEL ½, MIRABILIS, INTORNJATUR STREET, MRIEHEL CBD5050 (“ACUNETIX”). IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, COPY, OR OTHERWISE USE THE ACUNETIX SOLUTION. THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE THAT YOU ACCEPT THIS AGREEMENT AS SET FORTH ABOVE.

### 1. Definitions.

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

1.2 “**Customer Data**” means data, files, or information, including data, files, or information that include Personal Data, accessed, used, communicated, stored, or submitted by Customer or Customer’s Users use of the Acunetix Solution.

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

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

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

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

1.7 “**Order Form**” means an order form entered into between Customer and Acunetix for Customer’s purchase of the Acunetix Solution (as defined below) or other services from Acunetix.

1.8 “**Personal Data**” means information that may be used to readily identify an individual person.

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

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

1.11 “**Subscription**” means a subscription purchased by Customer to access and use the Acunetix Solution and to receive Support during the applicable Subscription Term.

1.12 “**Subscription Term**” means the subscription term for Customer’s access and use of the Acunetix Solution as set forth on the applicable Order Form.

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

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

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

## 2. Acunetix Solution.

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

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

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

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

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

2.3 *Restrictions.* Except as expressly set forth in this Agreement, and to the maximum extent permitted by applicable law, Customer will not (and will not allow any third party to): (i) decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure of the Acunetix Solution or the source code from the Acunetix Solution; (ii) distribute, license, sublicense, assign, transfer, provide, lease, lend, rent, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, the Acunetix Solution (except as expressly and specifically authorized in writing by Acunetix); (iii) use or access the Acunetix Solution in order to build a similar or competitive product or service or to disclose to any third party any benchmarking or

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

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

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

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

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

### **3. Support.**

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

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

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

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

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

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

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

#### **4. Security and Data Privacy.**

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

#### **5. Fees and Payment.**

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

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

5.3 *Payment Terms*. Unless otherwise stated on an Order Form, all fees are due within thirty (30) days of Customer’s initial acceptance of the Acunetix Solution or of the start of a new Subscription Term, and all payments must be made in the currency of the United States. Customer will reimburse Acunetix for all reasonable travel and other related expenses incurred by Acunetix in its performance under this Agreement.

5.4 *Taxes*. Customer must pay or reimburse Acunetix for all Taxes arising out of the transactions contemplated by the Agreement. Here “**Taxes**” means any sales, VAT (value-added tax), GST (goods and services tax), use, gross

receipts, business and occupation, and other taxes (other than taxes on our income), export and import fees, customs duties, and similar charges imposed by any government or other authority. If Customer is required to pay or withhold any Taxes for payments due under the Agreement, Customer must gross up its payments so that Acunetix receive all sums due in full and free of any deductions. If Customer is required to pay any Taxes to a taxing authority, Customer agrees to provide documentation to Acunetix upon Acunetix's request showing that Customer paid those Taxes.

5.5 *Changes to Fees.* Acunetix may change its fees and payment terms at any time in its sole discretion provided that such changes will not take effect for Customer until the start of the next Subscription Term (as specified in the applicable Order Form). Acunetix will provide written notice in advance to Customer of any changes to the fees that may affect the Acunetix Solution purchased by Customer.

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

## **6. Term and Termination.**

6.1 *Term.* Subject to the termination rights as set forth in this Agreement, the term of this Agreement will commence on the Effective Date and will continue for as long as the Acunetix Solution is being provided to Customer under this Agreement. The Subscription Term will automatically renew for successive terms equal in duration to the initial Subscription Term unless either party notifies the other party in writing, not less than ninety (90) calendar days before the expiration of the then-current Subscription Term, that such party does not wish to renew the Acunetix Solution for an additional Subscription Term.

6.2 *Termination.* Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party. Additionally, either party may terminate this Agreement and any or all Orders without liability to the other party if the other enters into compulsory or voluntary liquidation, ceases for any reason to carry on business, or takes or suffers any similar action that the other party reasonably believes will materially impair its performance under the Agreement (including payment of fees).

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

## **7. Limited Warranty.**

Acunetix represents and warrants to Customer that the Acunetix Solution, when used for its intended purpose and in accordance with Acunetix's instructions, the Acunetix Solution will perform substantially in conformance with the Documentation for a period of thirty (30) calendar days from the date Customer is first permitted to access and use the Acunetix Solution. Customer's sole and exclusive remedy, and Acunetix's sole and exclusive liability, for any breach of this warranty will be, at Acunetix's sole discretion, to either remedy the defect or refund the applicable fees paid by Customer for the Acunetix Solution provided that Customer promptly notifies Acunetix in writing of any alleged breach of this warranty within such thirty (30) calendar day period. This warranty is null and void to the extent the Acunetix Solution: (i) fails to conform with this warranty as a result of its use with any third-party hardware or software; or (ii) is used for an unintended purpose, is used other than in accordance with its published documentation or specifications, or is otherwise used in breach of this Agreement. OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACUNETIX AND ITS SUPPLIERS AND LICENSORS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS AGREEMENT AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. ACUNETIX AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, BE FREE FROM DEFECTS, OR MEET CUSTOMER'S REQUIREMENTS.

## **8. Indemnification.**

**8.1 *Indemnification by Acunetix.*** Acunetix will indemnify, defend, and hold Customer harmless against any third party claim that the Software or Services infringe or misappropriate any Intellectual Property Rights of a third party held under the laws of the United States or the European Economic Area provided that Customer promptly notifies Acunetix of any and all threats, claims, and proceedings related thereto and gives reasonable assistance and the opportunity for Acunetix to assume sole control over defense and settlement. Acunetix will not be responsible for any settlement it does not approve, provided that any such approval will not be unreasonably withheld. The foregoing obligations do not apply with respect to: (i) the Acunetix Solution or portions or components thereof (a) not created by Acunetix; (b) that are modified after delivery by Acunetix; (c) combined with other products, processes, or materials where the alleged infringement relates to such combination; (d) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (e) where Customer's use of such Acunetix Solution is not strictly in accordance with the Agreement and any Documentation; or (f) a Trial Version. In the event of a claim, or if Acunetix believes a claim is likely, Acunetix may modify the Acunetix Solution, obtain a license for Customer, or – if none the foregoing are accomplished – terminate this Agreement.

**8.2 *Indemnification by Customer.*** Customer will indemnify, defend, and hold Acunetix harmless from all damages, costs, settlements, attorneys' fees, and expenses related to any claim arising from (i) Customer Data or (ii) Customer's use or distribution of the Acunetix Solution, including any Trial Version, in violation of this Agreement.

## **9. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ACUNETIX OR ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. ACUNETIX'S AND ITS LICENSORS' LIABILITY UNDER THIS AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES CUSTOMER PAID IN THE PAST TWELVE (12) MONTHS FOR THE ACUNETIX SOLUTION GIVING RISE TO THE CLAIM OR \$10,000. THE FOREGOING LIMITATIONS WILL APPLY REGARDLESS OF WHETHER ACUNETIX OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER MAY NOT BRING A CLAIM UNDER THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ARISES.

## **10. Confidentiality.**

**“Confidential Information”** means any proprietary information disclosed by one party (“**Discloser**”) and received by the other party (“**Recipient**”) during, or prior to entering into, this Agreement that Recipient should know is confidential or proprietary based on the circumstances surrounding the disclosure. Confidential Information includes the Acunetix Solution and any non-public technical and business information. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault of or breach of this Agreement by Recipient; (ii) is rightfully known by Recipient at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by Recipient without use of Discloser’s Confidential Information; or (iv) Recipient rightfully obtains from a third party without restriction on use or disclosure. Recipient will maintain the confidentiality of Confidential Information, and Recipient agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. Recipient will protect the secrecy of and prevent disclosure and unauthorized use of Discloser’s Confidential Information using the same degree of care that it takes to protect its own confidential information and will in no event use less than reasonable care. Recipient may disclose Discloser’s Confidential Information if required by judicial or administrative process, provided that Recipient first provides Discloser with prompt notice of such required disclosure to enable the Discloser to seek a protective order. Upon termination or expiration of this Agreement and Discloser’s request, Recipient will promptly return or destroy (and provide written certification of such destruction) Discloser’s Confidential Information.

#### **11. Publicity.**

Customer agrees that Acunetix may publicly disclose that it is providing the Acunetix Solution to Customer and may use Customer’s name and logo to identify Customer in promotional materials, including press releases, provided that Acunetix does not state or imply that Customer endorses Acunetix’s products or services. Customer may not issue any press release or publicity regarding the Agreement, use the Acunetix name or logo or other identifying indicia, or publicly disclose that it is using the Acunetix Solution without Acunetix’s prior written consent.

#### **12. Government Licenses.**

For purposes of sales to government entities in the United States, the Acunetix Solution and the accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of the Acunetix Solution or the accompanying Documentation by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule.

#### **13. Export Compliance.**

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

#### **14. Miscellaneous.**

Customer may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder to a third party without the written consent of Acunetix, except that Customer may, without such consent, assign or transfer this Agreement, in whole, pursuant to a transfer of all or substantially all of Customer’s business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer of this Agreement by Customer in contravention of the foregoing will be null and void. Acunetix may freely assign or transfer this Agreement hereunder without Customer’s consent, provided that it agrees to give notice of any such assignment where feasible. The provisions hereof are for the benefit of the parties only and not for any other person or entity. Any notice, report, approval, authorization, agreement, or consent required or permitted hereunder will be

in writing; notices will be sent to the address that the applicable party has or may provide by written notice or, if there is no such address, the most recent address the party giving notice can locate using reasonable efforts. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision will be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this arrangement will otherwise remain in full force and effect and enforceable. This Agreement will be deemed to have been made in, and will be construed pursuant to, the laws of the state of Texas without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Customer hereby consents to the jurisdiction of the courts of both the state and/or federal courts of Texas. This is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments will be effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, will have no force or effect. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action.

© 2020 Acunetix Limited. All rights reserved. Last modified February 14, 2020.