

Participation Agreement – Managed Security Program for Commune Hotels and Resorts Individual Hotels

IMPORTANT: BY CLICKING THE “SUBMIT ORDER” BUTTON BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT APPLY FOR AND DO NOT CLICK ON THE “SUBMIT ORDER” BUTTON BELOW, AND PROMPTLY EXIT THE BROWSER.

This is a click-through Participation Agreement (“Agreement”) by and between Trustwave Holdings, Inc. (“Trustwave”) and the entity (hereinafter “Participant”) as identified in the order form containing this Participation Agreement in Trustwave’s web portal (the “Order Form”). Trustwave desires to provide services to Participant, and Participant wishes to receive such services pursuant to the terms and conditions of this Agreement.

The services that Trustwave will provide to Participant under this Agreement (the “Services”) and the pricing for such Services will be as set forth in the Order Form and chosen by Participant. The Order Form is incorporated herein by this reference.

Participant, a Commune Hotel, hereby purchases the Services for an initial term beginning on the date that Participant accepts this Participation Agreement and continuing for three or five years as selected by Client in the Order Form, subject to renewal as set forth below. Trustwave will bill Participant directly for the Services and Participant is responsible for paying such Services in accordance with the terms of this Agreement and the Order Form.

The Services under this Agreement shall commence as of the acceptance of this Agreement and the Order Form by Participant. Participant acknowledges and agrees that the Services are provided by Trustwave and not Commune Hotels and Resorts, LLC that Commune Hotels and Resorts, LLC has no liability or responsibility to Participant in connection with the performance by Trustwave of its obligations under this Agreement..

The following terms apply to all Services under this Agreement:

1. Participant (each individual Commune Hotel Location) will select either Option 1 or Option 2 within the Order Form. Regardless of which of the two options Participant selected within the Order Form, Participant will also receive one-time set-up fees of \$985/location for the Managed Firewall Service and \$100/location for the Broadband Support Service.
2. Trustwave cannot provide the Broadband Support Service without also providing the Managed Firewall Service.
3. The Managed Firewall Service Set-up Fee assumes each hotel’s Local Area Network (LAN) does not require any material changes to accommodate a Firewall and direct internet connection. If LAN engineering design or remediation services are required, additional fees would apply.
4. Any unused RU VPN connections at one location, below the cap of 10, may be utilized by another Commune location at no additional fee.

Dependencies and Assumptions

- Trustwave shall not begin to provide the Services as described herein until Participant has returned this signed agreement and a Purchase Order (PO) for the total amount of the services selected (full contract amount). All terms and conditions included in a PO or submitted with a PO shall be null and void for all purposes.
- Participant’s primary point-of-contact (POC) as identified above, or a designee, must be available to Trustwave during the entire engagement. The representative must have sufficient authority to schedule testing and address any issues that may arise.
- The Service Level Agreements (“SLAs”), if any, for the Managed Services described herein, which are incorporated into this Agreement and include commitments with respect to certain availability of the Managed Services, are set forth at https://www.trustwave.com/SLA/Ver001_Trustwave_MSS_SLA.PDF
- For SAE support, Participant is solely responsible for ensuring network bandwidth to access multi-media content, audio speakers, flash plug-in support and supported browser versions.
- Participant will provide Trustwave with sufficient information to evaluate compliance for all PCI DSS requirements or any other applicable requirements. Participant is solely responsible for providing access to and coordinating any required interviews or testing with its third parties or service providers.
- If needed, Participant will provide resources and information as requested to enable Trustwave’s consultants to sufficiently develop documentation consistent with PCI Information Security Policy requirements or any other applicable requirements. This will include access to personnel who can provide information related to the business operations, organizational structure, network architecture, security controls, disaster recovery and general daily operational processes and procedures.

- Participant shall obtain all consents and authorizations from any third parties necessary for Trustwave to perform the Services, including without limitation, third party datacenters, co-locations and hosts. For the avoidance of doubt, Trustwave will not be required to execute agreements with any such third parties.
- During testing, the configuration of Participant's network will be kept as stable as possible (i.e., no new systems or configuration changes). If changes are required, then Participant shall inform Trustwave and a mutually acceptable testing schedule shall be agreed upon.
- For Testing Support, Participant will provide Trustwave with the following:
 - Names for the primary business and technical contacts
 - Restricted access to documentation and source code, if applicable
 - Last known good builds of product and tools on an as-needed basis
 - A process for input of bugs into the Participant bug database and a template for bug reports
 - During business hours, best effort response time to help resolve any issues that may arise during the course of testing.

Managed Services Participant Obligations

- Participant understands and acknowledges that Trustwave will rely upon the accuracy of any information provided by Participant and that Trustwave's performance is dependent on Participant's timely and effective satisfaction of all of Participant's responsibilities hereunder and timely decisions and approvals by Participant.
- Participant shall provide, perform, and make available to Trustwave, at Participant's expense within 30 (thirty) days of the Effective Date, the resources and actions and information set forth below, and such other additional resources and actions and information, as Trustwave may from time to time reasonably request in connection with Trustwave's performance of the Services:
 - a. Participant agrees to cooperate with Trustwave in its efforts to gather initial technical and policy information required to establish the Service within 30 (thirty) days of Effective Date. Participant will provide Participant's current configuration and security policy information as reasonably requested by Trustwave.
 - b. Participant shall ensure that any computer equipment and hardware (and any replacement or substitute hardware or equipment), other than CPE supplied by Trustwave, shall conform to the specifications as provided to Trustwave.
 - c. In the event remedial procedures are necessary, as determined by Trustwave in its sole discretion, Participant will follow the reasonable instructions of Trustwave to effect such remediation.
 - d. Participant will designate Authorized Persons to:
 - i. consult with Trustwave on a regular basis in connection with the Services;
 - ii. cooperate with requests for information made by Trustwave related to the hardware, software, version, patch level, and configuration of devices connected to Participant's network;
 - iii. assist Trustwave in upgrading and troubleshooting the CPE;
 - iv. grant Trustwave access to the Participant's IP address(es) as identified and provided by Participant to scan for open ports and other possible security vulnerabilities; and
 - v. follow installation, configuration and/or maintenance instructions as provided by Trustwave.
- Participant agrees to promptly notify Trustwave of any change in the authorization, contact information, or employment status of any Authorized Persons. Trustwave shall incur no liability resulting from Participant's failure to provide such notification.
- Participant will be solely responsible for any unauthorized acts or omissions that occur as the result of Participant's access to or use of the Services or via the CPE and Participant agrees to indemnify and hold Trustwave harmless from such acts or omissions.
- Participant shall not distribute, reproduce, duplicate, copy, sell, resell or exploit the Services or any CPE for any commercial purposes or for the benefit of any third party.
- Participant shall install and maintain all CPE delivered by Trustwave in an appropriate environment, with adequate power and environmental controls comparable to those generally considered appropriate for business computing equipment.
- Participant shall not move the CPE to another network location unless it obtains approval in writing in advance of such move from Trustwave.

- Participant shall provide Trustwave with at least five (5) business days' notice prior to taking any action that may affect the IP addressing of the CPE.
- Participant agrees to make configuration changes to routers, firewalls (not managed by Trustwave), and other network devices upon Trustwave's request as required to enable communication between any CPE and Trustwave's SOC. If Participant permits Trustwave to perform installation services via remote access, Trustwave shall not be responsible for any damages in connection with such remote access.
 - a. If purchasing Managed Web Application Firewall Services, the following shall apply: Participant shall provide Trustwave with at least three (3) business days' notice prior to applying a significant change on the protected web application that will require re-base lining. The Participant understands and acknowledges that a significant change to the web application requires a new base lining period and that failing to notify Trustwave in time could result in this taking longer than expected Participant shall provide Trustwave with appropriate physical access to the CPE and to Participant's site during normal business hours. Participant will ensure Trustwave's ability to remotely access the CPE. Participant agrees to promptly notify Trustwave prior to any planned outage of such access.
 - b. If purchasing Cloud SIEM services, the following shall apply: Participant shall provide access to Trustwave-defined netblocks to and from the CPE systems to collect data from, and provide health monitoring and platform management, of those systems.
- Participant agrees to provide always-on Internet access to deployed CPE systems as specified by Trustwave. This refers to both outbound data sent from CPE systems to Trustwave's facilities, as well as inbound access from Trustwave as required to deliver each distinct service.
- For CPE deployed with out-of-band console devices, Trustwave strongly suggests Participant provide an analog phone line dedicated to each out-of-band console so that Trustwave can respond to any outages or perform device maintenance where console access is required. If Participant opts not to provide this access, Participant accepts any delays in re-establishing service due to lack of console access.
- Participant shall not modify, use or tamper with the CPE in any way, or to physically open or adjust the contents of CPE except as explicitly directed in writing by Trustwave or reverse engineer, disassemble or decompile any software loaded onto any CPE.
- Participant shall document and promptly report all malfunctions of the CPE or interruptions to Trustwave's access of which it becomes aware. Participant shall undertake any procedures reasonably specified by Trustwave necessary for the rectification of such malfunctions or interruptions within a reasonable time after such procedures have been received from Trustwave.
- Participant shall not power off the CPE unless it obtains written approval in advance from Trustwave.
- Participant will be solely responsible for providing the mechanism and storage location for any required data backups.
 - a. If purchasing managed SIEM Log Management appliance services, this will include all raw and parsed data stored in flat files on the SIEM Log Management appliance.

Terms and Conditions

1. Definitions

"Participant Premises Equipment" or "CPE" means any equipment licensed to Participant by Trustwave and used by Trustwave for provision of the Services.

2. Effective Date/Term

This Agreement shall have an effective date as of the date of acceptance of this Agreement (the "Effective Date") with an initial term of three (3) or five (5) years as selected by Participant in the Order Form and shall automatically renew on a month to month basis unless one of the parties provides the other written notice of its intent not to renew at least thirty (30) days prior to such renewal date.

3. Obligations

- a. Trustwave shall provide to Participant the services and deliverables (collectively, the "Services") described in a SOW.
- b. Participant shall provide to Trustwave the information described in a SOW as Trustwave may from time to time reasonably request in order to perform the Services.

- c. Participant acknowledges that Trustwave will rely upon the accuracy of information provided by Participant and that Trustwave's performance is dependent on Participant's timely and effective satisfaction of all of Participant's responsibilities hereunder and timely decisions and approvals by Participant.
- d. In the event Participant purchases any equipment from Trustwave, Participant or its designated agent or contractor shall have sole responsibility to install and configure the purchased equipment to operate in Participant's networks.
- e. Annualized Services must be used each year during the term of the applicable SOW and such Services cannot be used and/or credited in subsequent years. Any Services not used within such timeframes shall be forfeited.

4. Compensation

- a. Fees. Participant shall pay to Trustwave the fees and expenses set forth in the SOW and Purchase Order, provided the same have been approved in a SOW by Participant in advance. Travel and expenses are not included in the fees and will be billed separately as set forth in the SOW. Participant agrees that Trustwave shall have the right upon each anniversary of the effective date of a SOW or Purchase Order to increase the fees therein by the greater of (i) the U.S. Department of Labor Consumer Price Index (CPI) or (ii) 3.5% of the preceding fees.
- b. Payment Terms. Trustwave will invoice Participant, and Participant shall pay upfront Quarterly. Fees for Setup and Security Awareness Education Solutions are due and payable upon execution of this agreement. Trustwave shall begin invoicing the earlier of (i) 30 days following the execution of this agreement or (ii) the date that Participant's TrustKeeper Security Portal account is created. All invoices submitted by Trustwave are due and payable within thirty (30) days of the date of the invoice.
- c. Late Payment. Any amounts not paid within thirty (30) days of the date due shall accrue interest at the rate of one and one and a half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less. Trustwave reserves the right to disable Participant's Services for non-payment.
- d. Taxes, Shipping, Title, & Risk of Loss. Participant shall be responsible for all taxes (except for taxes on Trustwave's income), such as sales, use or excise taxes, and similar charges of any kind imposed by any governmental entity for Services provided under this Agreement. All products shipped within the United States will be shipped by Trustwave F.O.B. Shipping Point (Freight Prepaid and Added). All products shipped to a final destination outside of the United States will be shipped by Trustwave EXW (Ex Works) Incoterms 2010. Participant is responsible and will pay for freight, shipping, handling, insurance and other transportation charges, including, but not limited to all applicable import and export fees, customs, duties and surcharges. Notwithstanding the foregoing, title to any CPE or software delivered in connection with the Services shall remain with Trustwave. Title and risk of loss to any purchased hardware shall pass to Participant upon shipment; title to software shall remain with Trustwave.

5. Proprietary Rights

- a. Trustwave Technology and I.P. All technology used by Trustwave in connection with performing the Services, including software, portals, data processing systems (each of the foregoing, in object code and source code form), report templates, and CPE (collectively, "Trustwave Technology"), and any Trustwave intellectual property ("Trustwave IP"), and any derivative works of or modifications to the Trustwave Technology or Trustwave IP, is the sole and exclusive property of, and is valuable, confidential and proprietary to, Trustwave or its licensors. Except as otherwise expressly provided herein, Participant shall not acquire any rights in any Trustwave Technology or Trustwave IP as a result of receiving the Services. The sale of any equipment conveys no right or license to manufacture, duplicate or otherwise copy or reproduce any of the equipment. Participant shall not remove any proprietary notices on equipment delivered hereunder and may not co-brand or otherwise add any branding or marking to such equipment or its packaging.
- b. Data. In the course of providing the Services, Trustwave may collect information relating to activities on Participant's network (the "Data") including, but not limited to, network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. Trustwave retains the right to use the Data or aggregations thereof for any reasonable purpose, provided such data does not contain information identifying Participant or disclose any of Participant's confidential information.

- c. Publicity, Trademarks and Logo. Without prior written approval signed by an authorized representative of Participant or Trustwave as the case may be, neither party shall, directly or indirectly, (i) use the other party's name or any of its trademarks, service marks or logos, (ii) make any public announcement related to this Agreement or the Services or (iii) disclose to any third party the fact that the other party is a party to this Agreement.

6. Confidentiality

- a. "Confidential Information" means any information disclosed by either party to the other (including without limitation, documents, data centers, prototypes, samples, equipment, all software, benchmark tests, specifications, trade secrets, object code and machine-readable copies, including Trustwave's service portals). Confidential Information shall not, however, include any information which (i) was in the public domain when disclosed; (ii) becomes publicly known after disclosure through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure. and assistance in obtaining a protective order.
- b. Each party agrees not to use any Confidential Information of the other party for any purpose other than as contemplated by this Agreement and any SOWs. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party.
- c. The parties acknowledge that either party's breach of its obligations of confidentiality may cause the other party irreparable injury for which it would not have an adequate remedy at law. In the event of a breach, the non-breaching party shall be entitled to seek injunctive relief in addition to any other remedies it may have at law or in equity.
- d. Intentionally deleted.

7. Termination

- a. Termination Rights. Each party may terminate this Agreement only for cause (as set forth below) or upon written notice to the other party if no SOWs are in effect at such time. Each party may terminate a SOW only for cause (as set forth below) or as set forth in such SOW.
- b. Termination for Cause. This Agreement or any SOW may, by written notice, be terminated by a party for cause if any of the following events occur:
 - i. Either party may terminate for cause if the other party is in material breach of any term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after such party gives the breaching party written notice of such breach; or
 - ii. Trustwave may terminate for cause if, as to any Service Trustwave delivers to Participant from a third-party vendor, such vendor removes or disables access to all or any portion of such Service, ceases to do business or otherwise terminates its business operations; or
 - iii. Trustwave may terminate for cause if Participant fails to pay any amount due Trustwave within thirty (30) days after Trustwave gives Participant written notice of such nonpayment; or
 - iv. Trustwave may terminate for cause if Participant (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes.

c. Licensed CPE Return. Within ten (10) business days after the date of termination or discontinuance of this Agreement for any reason, Participant agrees to return, at its sole expense without setoff to any fees owed, any CPE(s) to Trustwave. Participant shall retain the risk of loss until such CPE is delivered to Trustwave's premises. Participant shall be solely responsible for, and shall reimburse Trustwave for, any damage caused to the CPE while it is installed at Participant's facilities, except to the extent such damage is caused by Trustwave personnel. If the CPE(s) are not timely returned or are not in the same condition in which received by Participant (except for normal wear and tear), Participant agrees to pay a fee of \$3,000 per CPE.

5. Effect of Termination.

- o If Participant selects the Option 1 (5-year term with the option to cancel for convenience without penalty after the end of the first year) within the Order Form, then the following language shall apply to Participant's purchase of Option 1: Notwithstanding anything to the contrary set forth in the Agreement, Participant may terminate this Agreement without penalty effective as of the end of the first year of service during the five year term of this Agreement by providing at least 30 days prior written notice to Trustwave (an "Early Termination"). If Participant terminates the Agreement or this Agreement for any reason, Participant agrees to pay Trustwave within 30 days for all services performed by Trustwave up to the date of cancellation that have not previously been paid. Additionally, if Participant terminates the Agreement or this Agreement other than for cause and other than an Early Termination as set forth above, then Participant shall pay to Trustwave, as a cancellation fee and not as a penalty, an amount equal to the sum of the service charges for the remainder of the then-current contract year of this Agreement. The parties agree that this option for Early Termination only applies to this Agreement and shall not amend the terms of the Agreement or any other agreement or statement of work between the parties.
- o If Participant selects the Option 2 (3-year term commitment, without the option to cancel for convenience without penalty during the 3-year term) within the online Order Form, then the following language shall apply to Participant's purchase of Option 2: If Participant terminates this Agreement or a SOW for any reason, Participant agrees to pay Trustwave within 30 days for all services performed by Trustwave up to the date of cancellation that have not previously been paid. Additionally, if Participant terminates this Agreement or any SOW other than for cause, then Participant shall pay to Trustwave, as a cancellation fee and not as a penalty, an amount equal to the sum of the service charges for the remainder of the term of the applicable SOW(s). Rights and obligations under this Agreement which by their nature should survive shall remain in effect after the termination or expiration of this Agreement.

d.

8. Warranties

- a. Trustwave Services. Trustwave warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. The exclusive remedy for any breach of the foregoing warranty shall be that Trustwave, at its own expense, and in response to written notice of a warranty claim by Participant within 90 days after performance of the Services at issue, re-perform the Services to conform to this standard.
- b. Licensed Equipment (CPE). In the event of a defect in the materials or workmanship of the CPE, Participant shall have the right to return such defective CPE to Trustwave, and Trustwave shall, at Trustwave's election and expense, either repair or replace such defective CPE. Participant shall be solely responsible for all costs associated with repairing or replacing any CPE damaged by accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; causes other than ordinary use; or any damage resulting from a breach of Participant's obligations hereunder.
- c. Purchased Equipment. Trustwave warrants to Participant, for the benefit of Participant only, that any purchased equipment (excluding software) furnished by Trustwave pursuant to the Agreement will be free from defects in material and workmanship for ninety (90) days from the date of shipment of the equipment. In the event of a defect in the materials or workmanship of the equipment during said warranty period, Participant shall have the right to return such defective equipment to Trustwave, and Trustwave shall, at Trustwave's election and expense, either repair or replace such defective equipment. After such warranty period expires, Trustwave shall have no obligation to repair or replace such equipment. During such warranty period, Participant shall be solely responsible for all costs associated with repairing or replacing any equipment damaged by accident; unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; causes other than ordinary use; or any damage resulting from a breach of Participant's obligations hereunder.
- d. By Participant. Participant represents and warrants to Trustwave that possession and use of information, specifications and data provided by Participant to Trustwave under the terms and conditions of this Agreement will not constitute an infringement upon any patent, copyright, trade secret, or other intellectual property right of any third party.

9. Limitation of Liability & Disclaimer of Warranties

- a. TRUSTWAVE SHALL NOT BE LIABLE TO PARTICIPANT FOR (1) ANY ACTS OR OMISSIONS WHICH ARE NOT THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT, (2) ANY AMOUNTS IN EXCESS OF ANY FEES PAID TO TRUSTWAVE BY PARTICIPANT IN THE TWELVE MONTHS PRECEDING THE CLAIM, (3) ANY OUTAGES OR SLOW DOWNS OF PARTICIPANT'S COMPUTER SYSTEMS RESULTING FROM THE PERFORMANCE OF ANY SERVICES UNLESS SUCH ARE THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT, OR (4) ANY LOSSES, COSTS, DAMAGES OR EXPENSES INCURRED BY PARTICIPANT RESULTING FROM THE PERFORMANCE OF ANY TEST, UNLESS SUCH ARE THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT.
- b. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, IN NO EVENT WILL TRUSTWAVE BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF TRUSTWAVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, TRUSTWAVE WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING THE SERVICES.
- c. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TRUSTWAVE DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS OR SERVICES PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. Trustwave does not warrant that the CPE or Services are offered without defect or error, or that the operation of the CPE or availability of the Services will be uninterrupted or error-free. Furthermore Participant acknowledges and understands that the monitoring for availability of dynamically addressed CPE devices may result in a greater time window for device outage detection. Participant understands and agrees that receiving the Services does not guarantee that Participant's information systems will be secure.

10. Terms Applicable to Certain Services

- a. In the event Trustwave performs Payment Card Industry-related services for Participant, the following shall apply:
 - i. Participant acknowledges and agrees that Participant's use of Trustwave's services does not guarantee PCI compliance or that its' systems are secure from unauthorized access. Participant is responsible for PCI compliance and notification of any suspected breach of its systems and any fines, penalties or registration fee imposed by any payment card association or its acquiring bank. Participant hereby authorizes Trustwave to release a redacted copy of Participant's PCI DSS Report on Compliance ("ROC") to the PCI SSC upon the PCI SSC's written request. Trustwave shall provide Participant with notice of such request from the PCI SSC. In the event Participant suffers a credit card compromise, Participant authorizes Trustwave to release a copy of its ROC to the credit card associations upon the credit card associations' written request. Trustwave shall provide Participant with notice of such request from the credit card association. Finally, Participant authorizes Trustwave to release a copy of Participant's ROC to Participant's acquiring bank. Trustwave shall have the right to retain a copy of Participant's information solely as necessary for Trustwave to comply with the PCI SSC data retention requirements for Qualified Security Assessors.
- b. In the event Participant purchases portal-based services, such as TrustKeeper services, and/or security testing services, the following shall apply:
 - i. Participant represents and warrants that Participant has full right, power, and authority to consent to have the TrustKeeper service scan for vulnerabilities the IP address and/or URL and/or domain names identified to Trustwave by Participant for scanning, whether electronically or by any other means, whether during initial enrollment or thereafter. Without limiting any other remedy that Trustwave may have, Participant agrees to indemnify and hold Trustwave and its affiliates harmless from and against all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorney's fees and costs incurred by Trustwave resulting from Participant's breach of this provision. If applicable, Participant shall obtain all consents and authorizations from any third parties necessary for Trustwave to perform the Services, including without limitation, third party datacenters, co-locations and hosts. Trustwave will not be required to execute agreements with any such third parties. Participant agrees that TrustKeeper, including without limitation its functionality and contents, is confidential information, and Participant's use and/or access to TrustKeeper is subject to the terms of the mutual non-disclosure agreement executed by the parties. Participant acknowledges and understands that accessing and scanning IP addresses and penetration testing involves inherent risks, including, without limitation, risks related to system or network performance and availability, and data corruption or loss.

- ii. Participant's use of Trustwave portals, reports, and scanning solution is subject to the following restrictions : (i) Participant may use the services and portals only to scan IP addresses, URLs and domain names owned by and registered to Participant; (ii) portals, services, and reports may only be used for the stated purposes in this Agreement for Participant's internal business purposes in accordance with all applicable laws (including any export control laws); and, (iii) Participant shall limit access to portals to only those employees and/or contractors who have an obligation of confidentiality with Participant and only to those who have a requirement for such access on a "need to know" basis and Participant shall be solely responsible for disabling portals accounts for those employees and/or contractors who no longer require access. Participant shall not (i) decompile, reverse engineer, disassemble, or otherwise derive the source code from any component of the portals including the software embedded therein; (ii) modify, enhance, translate, alter, tamper with, upgrade or create derivatives works of the portals, software or documentation; or
- (iii) strip out or alter any trademark, service mark, copyright, patent, trade secret, ownership or any other proprietary or Intellectual Property notices, legends, warnings, markings or indications on or within any component of the portals, software or documentation, or attempt (i), (ii), and/or (iii) above.

11. General

- a. Assignment. Neither party may assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other party; provided, however, that no written consent shall be required to assign this Agreement to any parent or wholly owned subsidiary of a party, and further provided that either party may assign this Agreement without the other's prior written consent to a successor by way of a merger, acquisition, sale, transfer or other disposition of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- b. Force Majeure. Neither party shall be liable for any default or delay in the performance of its obligations hereunder (except for payments) if and to the extent such default or delay is caused, directly or indirectly, by acts of God, governmental acts, accidents, wars, terrorism, riots or civil unrest, fires, storms, earthquakes, floods or elements of nature, or any other similar cause beyond the reasonable control of such party, provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non- performing party through the use of commercially reasonable alternative sources, workaround plans or other means.
- c. Notice. Except as otherwise provided in this Agreement, all notices, consents, or approvals required by this Agreement shall be in writing sent by certified or registered mail, postage prepaid, or by electronic mail (receipt confirmed) to, (i) in the case of Trustwave, 70 W. Madison Street, Suite 1050, Chicago, IL 60602, Attn: Legal Department, Email: legal@trustwave.com, and (ii) in the case of Participant, the address and email address set forth on the signature page hereto. Notices shall be deemed effective on the date of mailing (for certified or registered mail) or the date that receipt is confirmed (for electronic mail). Participant agrees to accept communications from Trustwave via email.
- d. Relationship. The relationship between the parties to this Agreement shall be that of independent contractors. Nothing in this Agreement shall be construed to create or imply a partnership, joint venture, agency relationship or contract of employment.
- e. No Third Party Beneficiaries. Nothing herein expressed or implied is intended to or shall be construed to confer upon or give any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
- f. Subcontractors. Participant expressly consents to Trustwave's right to use of subcontractors in connection with the performance of Services hereunder, provided that Trustwave shall remain responsible for its obligations under this Agreement.
- g. No Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, Participant shall not, directly or indirectly, hire or solicit to be hired any employee of Trustwave or any of its affiliates. If Participant breaches this provision, Participant shall pay Trustwave one times (1X) the salary paid by Trustwave to such employee so hired. The parties agree that said amount is a reasonable estimate of the costs and expenses that Trustwave will incur as a result of training and replacing such employee. Hirings resulting from general solicitations of employment shall not be deemed to be direct or indirect hirings or solicitations for the purposes of this provision.
- h. Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective.

- i. Severability. If any provision in this Agreement is found to be invalid, unlawful or unenforceable, the parties shall agree in good faith to such amendments as will preserve the intent of this Agreement. If the parties fail to so agree, such invalid provision will be severed from this Agreement, which will continue in full force and effect.
- j. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflict of law principles. The parties agree that any legal action or proceeding relating to this Agreement may be instituted in a state or federal court in Cook County, Illinois, or state or federal court in San Francisco County, California, and agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such action or proceeding.
- k. Directives. Participant shall immediately notify Trustwave if Participant knows or has reason to believe that Trustwave has been or will be required, as a result of activity arising out of or related to this Agreement or the services contemplated hereunder, by any court or administrative agency of the United States or any state, by the Payment Card Industry Security Standards Council, or by any legal process to respond to any subpoena, search warrant, discovery or other directive under the authority of such court, administrative agency, governmental inquiry or process in connection with any proceeding or investigation in which Participant or any of its affiliates, officers, directors, agents, employees, or subcontractors is involved. Whether or not such notice is given by Participant, Participant shall directly assist Trustwave in Trustwave's attempt to reduce the burdens of compliance with any such directive,.
- l. Export Control. Participant agrees to comply with all applicable U.S. and foreign export laws, restrictions, and regulations and not to export or re-export or allow the export or re-export of any product, technology or information it obtains or learns pursuant to its relationship with Trustwave in violation of any such laws, restrictions or regulations. Participant shall bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the U.S. of the equipment purchased from Trustwave to any location in compliance with all applicable laws and regulations prior to the delivery thereof by Participant. Participant shall indemnify and hold Trustwave harmless from all claims, damages and related expenses (including reasonable attorneys' fees) incurred by Trustwave that result from Participant's breach of this provision. TRUSTWAVE SHALL NOT BE LIABLE FOR PARTICIPANT'S VIOLATION OF ANY EXPORT OR IMPORT LAWS, WHETHER UNDER THE UNITED STATES OR FOREIGN LAW.
- m. Entire Agreement; Amendment. This Agreement, together with any software end-user license agreement (EULA), any SOW and any non-disclosure agreement executed between the parties, constitutes the entire agreement between Trustwave and Participant regarding the subject matter hereof. All prior or contemporaneous agreements, proposals, understandings and communications between Trustwave and Participant regarding the subject matter hereof, whether oral or written, are superseded by and merged into this Agreement. Neither this Agreement nor any SOW may be modified or amended except by a written instrument executed by both Trustwave and Participant. Notwithstanding anything else in this Agreement or otherwise, in the event of any changes or updates to applicable laws, regulations, rules, standards, interpretations or other external guidelines (including without limitation the PCI Data Security Standard or the Payment Application Data Security Standard), Trustwave may, upon notice to Participant, make appropriate revisions to the scope and pricing for any Services that are affected by such changes or updates. The terms of any Participant purchase order are accepted for accounting convenience only. No terms or conditions contained in any purchase order shall amend this Agreement or shall otherwise constitute an agreement between the parties.
- n. Dependencies. Participant acknowledges that the provision of Services is dependent upon the performance of Participant, and its affiliates, and that Trustwave shall not be liable for its failure to perform to the extent such failure is due to (i) a failure by Participant or any third party retained by, or under the control of, Participant to provide data or materials that Participant or such third party is required to provide to Trustwave or required by Trustwave to perform the services under this Agreement, (ii) a failure by Participant to timely and accurately perform its responsibilities as set forth in this Agreement, or (iii) a failure by Participant to obtain consents, approvals or access for Trustwave.

ACCEPTANCE

BY CLICKING THE "SUBMIT ORDER" BUTTON BELOW, YOU AGREE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU WILL BE BOUND BY AND COMPLY WITH ALL OF ITS TERMS AND CONDITIONS. DO NOT CLICK THE "SUBMIT ORDER" BUTTON IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.