

Trustwave Master Terms and Conditions

This Trustwave Master Terms and Conditions (“**Agreement**”) governs the business relationship between Trustwave and its clients (each a “**Client**” and together with Trustwave, the “**Parties**”, and each, a “**Party**”). The Agreement will apply where the Parties (i) have signed an Order Form or SOW, which references this Agreement and (ii) have not separately agreed to a master services agreement. This Agreement is effective as of the date of final signature on such Order Form or SOW (“**Effective Date**”).

- If Client is located in **Europe, Middle East, Africa, and United Kingdom**, Client enters this Agreement with Trustwave Limited, incorporated and registered in England and Wales (company number 05107724), whose registered office is at 5 Churchill Place, 10th Floor London, E14 5HU, UK, on behalf of itself, its subsidiaries, and its affiliates, and Exhibit A to this Agreement applies.
- If Client is located in **Australia or New Zealand**, Client enters this Agreement with either:
 - TWH Australia Pty Ltd (ABN 84 149 243 890), with a principal address at Suite 1104, Level 11, 46 Market Street, Sydney, 2000, on behalf of itself, its subsidiaries, and its affiliates, or
 - TW Cyber Security Pty Ltd (ABN 45 625 409 958), with a principal address at Suite 1104, Level 11, 46 Market Street, Sydney, 2000, on behalf of itself, its subsidiaries, and its affiliates, as indicated in the SOW or Order Form, and Exhibit B to this Agreement applies.
- If Client is located **anywhere else**, Client enters this Agreement with the Trustwave entity listed on the applicable SOW or Order Form, and no regional addendum applies.

The term “**Trustwave**” in this Agreement refers to the Trustwave entity applicable to Client’s location. In consideration of the promises and the mutual covenants below and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1 DEFINITIONS

- 1.1 “**Equipment**” means any Trustwave products, equipment, or software licensed to Client by Trustwave that form a part of the Services and are used for provision of the Services (including without limitation, any portal, or data log collectors).
- 1.2 “**Order Form**” means the order form executed by the Parties and made subject to this Agreement which identifies the Services, Fees, other transactional information, and scope of the Services.
- 1.3 “**Purchase Order**” means a purchase order or purchase order exemption form, as may be amended in writing by the Parties from time to time and subject to this Agreement.
- 1.4 “**Service Description**” means the description of work activities and deliverables, if any, applicable to the Services and included as part of an Order Form or SOW.
- 1.5 “**SOW**” means the statement of work executed by Parties and made subject to this Agreement which identifies and includes the Services, Fees, Service Descriptions, and other transactional information and scope of the Services.
- 1.6 “**TPP**” means third party products, services, equipment, and software licenses sold by Trustwave to Client which may comprise, may be integrated into, or may be used in connection with the Services, including open-source software.
- 1.7 “**TPP Agreements**” means the end user agreements between Client and the applicable third party available as a “click-through” or “shrink-wrap” agreement or that otherwise accompanies any TPP.

2 OBLIGATIONS

- 2.1 Services. Trustwave will provide Client the services, Equipment, deliverables, or products as described in an Order Form or SOW (collectively, “**Services**”).

- 2.2 Client Information. Client will provide Trustwave with the information described in an Order Form or SOW and as Trustwave may otherwise reasonably request. Client acknowledges that Trustwave will rely upon the accuracy and completeness of information provided by Client and that Trustwave's performance is dependent on (i) Client's timely and effective satisfaction of its responsibilities under this Agreement and (ii) Client's timely decisions and approvals. Client acknowledges that the Services are not a substitute for legal or regulatory advice.
- 2.3 Annualized Services. Client must use any annualized Services within each year of the term of the applicable SOW or Order Form. Client cannot credit or use unused annualized Services in subsequent years. Client forfeits any annualized Services not used within such timeframes.

3 COMPENSATION

- 3.1 Fees. Client will pay Trustwave the fees and other amounts as set forth in the applicable Order Form or SOW and Purchase Order ("**Fees**"). Travel and expenses are not included in the Fees and will be billed separately as set forth in the applicable Order Form or SOW. Where Client designates use of a third-party payment processor network, Client will be responsible for payment of all fees and charges associated with use of such network and Trustwave may invoice such fees or charges with other fees due under this Section 3 or on a separate invoice. Trustwave may increase the Fees specified in any Order Form or SOW by up to six percent (6%) per annum beginning on the second anniversary of the Effective Date as defined in any Order Form or SOW, if applicable. Client may not withhold, offset, recoup, or debit any amounts owed (or to become due or owing) to Trustwave, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Trustwave.
- 3.2 Payment Terms. Trustwave will begin invoicing for the Services upon execution of the applicable Order Form or SOW. Client will pay Trustwave's invoices within thirty (30) days following the date of invoice ("**Due Date**").
- 3.3 Late Payment. If Client does not pay any amounts due within thirty (30) days of the Due Date, such unpaid amounts will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, determined and compounded daily from the Due Date until the date paid. Trustwave reserves the right to disable the Services if Client does not pay an invoice by the Due Date.
- 3.4 Taxes, Shipping, Title, & Risk of Loss. Client will be responsible for all taxes (except for taxes on Trustwave's income or real property), such as sales, use, or excise taxes, and similar charges of any kind imposed by any governmental entity for Services provided under this Agreement. Client is also 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. Risk of loss to any Equipment will pass to Client upon shipment; title to Equipment will remain with Trustwave. Title and risk of loss of TPP is governed by the TPP Agreements.

4 PROPRIETARY RIGHTS

- 4.1 Trustwave IP. Trustwave grants to Client a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to access and use the Services and Equipment during the term of the applicable Order Form or SOW only. All technology and documentation used by Trustwave in connection with performing the Services, including, but not limited to, software, portals, data processing systems (each of the foregoing, in object code and source code form), report templates, and Equipment, any associated Trustwave intellectual property, and any derivative works or modifications ("**Trustwave IP**"), is the sole and exclusive property of, and is valuable, confidential, and proprietary to Trustwave. Client will not acquire any rights in any Trustwave IP. This Agreement conveys no right or license to manufacture, duplicate, or otherwise copy or reproduce any of the Equipment. Client will not remove any proprietary notices on Equipment delivered and may not co-brand or otherwise add any branding or marking to such Equipment or its packaging. Client agrees that any feedback, including suggestions for improvements or ideas, is Trustwave's sole and exclusive property. Subject to Client's acceptance of and compliance with applicable TPP Agreements, Trustwave will supply to Client and the TPP vendor will grant to Client a non-exclusive, non-transferable, non-sublicensable license for the Term of the applicable Order Form or SOW, to use TPP for Client's internal operations and maintenance purposes in accordance with this Agreement, and not for commercial distribution or other trade dealings.
- 4.2 Services Improvements. In providing the Services, Trustwave may collect information relating to activities on Client's network, including, but not limited to, network configuration, TCP/IP packet headers and contents, log files, malicious codes, and Trojan horses. Client grants to Trustwave a limited, non-exclusive license to use such information during the Term. During and after the Term, Trustwave retains the right to use such information or aggregations for any reasonable purpose, provided it is de-identified. Additionally, Trustwave

retains all rights to commercialize and release any material resulting from providing consulting and professional services if such material does not identify the Client or include details of any vulnerabilities unique to the Client's environment or systems.

- 4.3 Publicity, Trademarks, and Logo. Without prior written approval signed by an authorized representative of Trustwave, Client will not, directly or indirectly, (i) use Trustwave's name or any of Trustwave's 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 Trustwave is Client's service provider.

5 CONFIDENTIALITY

- 5.1 Definitions. "**Confidential Information**" means any and all non-public, proprietary, or confidential information or documentation disclosed by either Party ("**Discloser**") to the other Party ("**Recipient**") including without limitation, documents, trade secrets, know-how, data centers, prototypes, samples, Equipment, software, benchmark tests, specifications, trade secrets, object code and machine-readable copies, (including all copies and derivatives thereof), regardless of format. Confidential Information will not, however, include any information which (i) was in the public domain at the time it was disclosed or subsequent to when it was disclosed to the Recipient by no fault of Recipient, (ii) is already rightfully in the possession of the Recipient at the time of disclosure, as the Recipient can demonstrate through objective time-stamped evidence, and free of any confidentiality obligation, or (iii) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information, or (iv) is required by law to be disclosed by the Recipient, provided that the Recipient gives the Discloser prompt written notice of such requirement prior to disclosure to the extent permitted by applicable law and assistance in obtaining a protective order. Recipient will limit any such required disclosure to the information explicitly requested.
- 5.2 Confidential Treatment. Recipient will not use any Confidential Information of the Discloser for any purpose other than as contemplated by this Agreement or any Order Form or SOW. Recipient will not disclose any Confidential Information of the Discloser to third parties or to any employees, except to those employees who are required to have the information to evaluate or engage in discussions concerning the Services, or the terms of this Agreement or any applicable Order Form or SOW. Neither Party will reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects which embody the other Party's Confidential Information. Recipient will take commercially reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Discloser's Confidential Information.
- 5.3 Injunctive Relief. A 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 will be entitled to seek injunctive relief in addition to any other remedies it may have at law or in equity.
- 5.4 No Representations. Trustwave's obligations under this Section 5 do not create any additional implied or express representations or warranties regarding the Services. Trustwave will not be liable for any breach of this Agreement resulting from a hack or intrusion by a third party into Client's network, environment, software, hardware, operational technology, or information technology systems, unless the hack or intrusion was through endpoints or devices monitored by Trustwave pursuant to an Order Form or SOW and was caused directly by Trustwave's gross negligence or willful misconduct.

6 TERM AND TERMINATION

- 6.1 Term. This Agreement will commence on the Effective Date and will continue in full force and effect thereafter until terminated in accordance with the provisions of this Agreement ("**Term**"). Unless otherwise specified, each Order Form or SOW will commence on the date executed by both Trustwave and Client and will expire at the end of its term.
- 6.2 Termination Rights. Each Party may terminate this Agreement for cause (as set forth below) or upon written notice to the other Party if no Services are in effect at such time. Each Party may terminate a Service for cause (as set forth below) or as set forth in the applicable SOW.
- 6.3 Termination for Cause.
- 6.3.1 Either Party may terminate this Agreement or any applicable Service for cause if the other Party is in material breach of this Agreement or the applicable Order Form or SOW; provided that such breach, if capable of being cured, is not cured within thirty (30) days after the terminating Party provides the breaching Party with written notice of such breach;
- 6.3.2 Trustwave may terminate this Agreement or any Service for cause, if the TPP used to provide such Services is substantially changed by the TPP provider (including a substantial increase in price), or if, for any reason, Trustwave no longer has access to or the ability to use such TPP;

- 6.3.3 Trustwave may terminate this Agreement or any applicable Service for cause if Client fails to pay any amount due to Trustwave within thirty (30) days after Trustwave gives Client written notice of such nonpayment; and
- 6.3.4 Trustwave may terminate this Agreement or any applicable Service for cause if Client (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.
- 6.4 Equipment Return. Upon the earlier of the termination or expiration of the Agreement or the applicable SOW or Order Form, Client will return all Equipment to Trustwave. If the Equipment is not timely returned or is not in the same condition as received by Client (except for normal wear and tear), Client will be responsible for the then-current replacement costs of such Equipment.
- 6.5 End of Life. If, during the term of the applicable SOW or Order Form, Trustwave discontinues any Service, Trustwave will provide Client with written notice of such discontinuation as soon as reasonably practicable but no less than ninety (90) days prior to such discontinuation and may, in its sole discretion, either (i) substitute the discontinued Service with a service of comparable quality and effectiveness, or (ii) terminate the discontinued Services.
- 6.6 Effect of Termination. If Client terminates this Agreement or a Service, Client agrees to pay Trustwave within thirty (30) days for all Services performed by Trustwave up to the date of cancellation that have not previously been paid. Additionally, if Client terminates this Agreement or any Service other than for cause, then Client will pay Trustwave, as a cancellation fee and not as a penalty, an amount equal to the sum of the Fees for the remainder of the term of the applicable Service(s). The rights and obligations in Sections 3, 4, 5.3, 5.4, 6, 7, and 9 will survive any termination or expiration of this Agreement. The rights and obligations in Section 5.1 and 5.2 expire five (5) years after the Effective Date; provided that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations will survive such expiration until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Recipient.

7 TRUSTWAVE WARRANTIES

- 7.1 Trustwave Services Warranties. Trustwave warrants that the Services provided under this Agreement will 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 this warranty will be that Trustwave, at its own expense, will re-perform the Services to conform to this standard or otherwise remedy an alleged breach of this warranty; provided that Client sends Trustwave written notice of a warranty claim under this Section 7.1 within ninety (90) days after performance of the Services at issue.
- 7.2 Equipment Warranties. If there is a defect in the materials or workmanship of the licensed Equipment, Client will have the right to return such defective Equipment to Trustwave, and Trustwave will, at Trustwave's election and expense, either repair or replace such defective Equipment. Client will be solely responsible for all costs associated with repairing or replacing any Equipment damaged by or as a result of (i) an accident, (ii) unusual physical, electrical, or electromagnetic stress, (iii) neglect, (iv) misuse, (v) failure of electric power, air conditioning or humidity control, (vi) causes other than ordinary use, or (vii) Client's breach of its obligations under this Agreement.

8 CLIENT WARRANTIES

- 8.1 Non-Infringement. Client represents and warrants that possession and use of information, specifications and data provided by Client to Trustwave will not constitute an infringement upon any patent, copyright, trade secret, or other intellectual property right of any third party.
- 8.2 Client's Use of Services. Client represents and warrants that it has full right, power, and authority to consent to have Trustwave, either directly or through any third-party services, scan the IP address, URL, and domain names identified by Client for scanning. If applicable, Client will obtain all consents and authorizations from any third parties necessary for Trustwave to perform the Services. Trustwave will not be required to execute agreements with any such third parties. Client agrees that accessing and scanning IP addresses and penetration testing involves inherent risks, including, without limitation, system or network performance and availability risk, and data corruption or loss. Client will 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 Client's breach of this Section 8.2.
- 8.3 Client's Use of Trustwave IP. Where Client uses Trustwave IP: (i) Client may only request scans for IP addresses, URLs, and domain names owned by and registered to Client, (ii) Client's activities may only

be used for Client's internal business purposes and must be in accordance with all applicable laws (including any export control laws), and (iii) Client will limit access to Trustwave IP to only its employees or contractors who have an obligation of confidentiality substantively similar to Section 5 with Client and require access on a "need to know" basis. Client will be solely responsible for disabling Equipment for its employees or contractors who no longer require access. Client will not (i) decompile, reverse engineer, disassemble, or otherwise derive the source code from any component of the Trustwave IP, (ii) modify, enhance, translate, alter, tamper with, upgrade, or create derivatives works of the Trustwave IP, (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 Trustwave IP, (iv) merge TPP or any part of the Services with other software, or (v) attempt (i), (ii), (iii) or (iv) above.

- 8.4 End User. Unless otherwise agreed by Trustwave in the applicable Order Form or SOW, Client represents and warrants that it is the ultimate person to use or consume all Services provided pursuant to this Agreement.

9 LIMITATIONS OF LIABILITY & DISCLAIMER OF WARRANTIES

- 9.1 General. TRUSTWAVE WILL NOT BE LIABLE TO CLIENT 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 CLIENT IN THE TWELVE MONTHS PRECEDING THE CLAIM, (3) ANY OUTAGES OR SLOW DOWNS OF CLIENT'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 CLIENT RESULTING FROM THE PERFORMANCE OF ANY TEST, UNLESS SUCH ARE THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS, OR WILLFUL MISCONDUCT.

- 9.2 Indirect Damages. 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.

- 9.3 Disclaimer of Warranty. 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 EQUIPMENT, SERVICES, OR TPP PROVIDED INCIDENTAL TO THE SERVICES UNDER THIS AGREEMENT. Trustwave does not warrant that the Equipment or Services are offered without defect or error, or that the operation of the Equipment or availability of the Services will be uninterrupted or error-free. The only warranties for TPP are set forth in all applicable TPP Agreements. To the extent Client is subject to TPP Agreements, Client agrees to indemnify Trustwave against all damages which Trustwave may incur in connection with Client's violation of an applicable TPP Agreement. Furthermore, Client agrees

- 9.3.1 receiving the Services or purchasing TPP does not guarantee Client's compliance with any legal obligation or that Client's information systems will be secure;
- 9.3.2 Client is responsible for managing and maintaining access rights and logical security, system security, database security and other information security for its own networks, platforms, and systems; and
- 9.3.3 Client is responsible at all times for making its own assessments and judgments regarding the configuration and suitability of its chosen security solutions.

- 10 Data Protection. The Parties will process Personal Data (as defined in the DPA) as agreed in the Trustwave Data Processing Agreement located at <https://www.trustwave.com/en-us/legal-documents/contract-documents/> ("DPA"), which is incorporated by reference into this Agreement.

11 GENERAL

- 11.1 Compliance with Laws. Client agrees to comply with all applicable laws and regulations, including but not limited to the sanctions and embargoes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control and applicable global anti-corruption laws and of the United States, including the

Foreign Corrupt Practices Act. Trustwave may terminate all or part of this Agreement or Service(s) if Trustwave determines, in its sole and exclusive judgment, that fulfilling an obligation under the Agreement or providing the applicable Service(s) may violate U.S. or other applicable export control, sanctions, or anti-corruption laws and regulations, without further liability or obligation.

- 11.2 **Assignment.** Client will not assign any of its rights or delegate any of its obligations under this Agreement without Trustwave’s prior written consent. Any purported assignment or delegation in violation of this Section 11.2 is null and void. Trustwave may assign any of its rights or delegate any of its obligations under this Agreement without Client’s prior written consent. No assignment or delegation relieves Client of its obligations under this Agreement.
- 11.3 **Force Majeure.** Neither Party will be liable for any default or delay in the performance of its obligations under this Agreement (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 that 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.
- 11.4 **Notice.** Except as otherwise provided in this Agreement, all notices, consents, or approvals required by this Agreement will 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 600, Chicago, IL 60602, Attn: Legal Department, Email: legal@trustwave.com, and (ii) in the case of Client, the address and email address set forth in the SOW or Order Form. Notices will be deemed effective on the date of mailing (for certified or registered mail) or the date that receipt is confirmed (for email). The Parties agree to accept communications via email.
- 11.5 **Relationship.** The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to create or imply (i) a partnership, joint venture, agency relationship or contract of employment or (ii) an exclusive relationship for the sale or purchase of the Services between the Parties.
- 11.6 **No Third-Party Beneficiaries.** Nothing expressed or implied is intended to or will be construed to confer upon or give any other person or entity any rights or remedies under or by reason of this Agreement.
- 11.7 **Subcontractors.** Client expressly consents to Trustwave’s right to use subcontractors in connection with the performance of Services, provided that Trustwave will remain responsible for its obligations under this Agreement.
- 11.8 **High Risk Activities.** THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR ANY ACTIVITIES THAT COULD LEAD TO DEATH, PERSONAL INJURY, OR ENVIRONMENTAL DAMAGE, INCLUDING BUT NOT LIMITED TO THE DESIGN, CONSTRUCTION, OPERATION, OR MAINTENANCE OF NUCLEAR FACILITIES, THE NAVIGATION OR OPERATION OF AIRCRAFT OR OTHER TRANSPORTATION SERVICES, OR THE OPERATION OF LIFE-SAVING, OR LIFE OR HEALTH-SUPPORT OR LIFE-CRITICAL MEDICAL EQUIPMENT. ACCORDINGLY, TRUSTWAVE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH ACTIVITIES. CLIENT WILL NOT INCORPORATE (WITHOUT THE EXPRESS WRITTEN APPROVAL OF TRUSTWAVE) ANY SERVICES INTO ANY SUCH PRODUCTS.
- 11.9 **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. No waiver of any breach of this Agreement will be construed as a waiver of any succeeding breach.
- 11.10 **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 11.11 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of Delaware, without giving effect to conflict of law principles.
- 11.12 **Dispute Resolution.** “**Dispute**” means any dispute or controversy arising out of or relating to any interpretation, construction, performance, or breach of this Agreement, any Order Form, or any SOW.
- 11.12.1 **Inter-Party Dispute Settlement.** If a Party wishes to identify a Dispute, it will provide written notice to the other Party, detailing the nature of such a Dispute. The Parties will negotiate in good faith and resolve any Dispute.
- 11.12.2 **Arbitration.** If the Parties cannot resolve a Dispute under Section 11.12.1 within thirty (30) days of notice of a Dispute, any such Dispute will be settled by confidential arbitration to be held in Dover, Delaware, or such other location in the State of Delaware as the Parties may agree, in accordance with the rules then in effect of the American Arbitration Association. The Parties agree to a panel made up of one arbitrator in the event of a Dispute. The arbitrator may grant injunctions or other relief. The

decision of the arbitrator will be final, conclusive, and binding on the Parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction over the Parties. The Parties will each pay one-half (½) of the costs and expenses of such arbitration and will separately pay counsel fees and expenses. Except as may be required by law, neither Party, nor its affiliates, nor an arbitrator may disclose the existence, content or result of any arbitration held relating to this Agreement without the prior written consent of both Parties.

11.12.3 Venue and Jury Waiver. If the Parties cannot resolve a Dispute under Section 11.12.1 and a final decision is not reached or available under Section 11.12.2, or, if for any reason a Dispute must proceed in court as a lawsuit: (1) any such Dispute will only be brought as a lawsuit in the state or federal courts of Delaware , (2) both Parties irrevocably consent and submit to the exclusive personal jurisdiction and venue of such courts, (3) BOTH PARTIES WAIVE ANY RIGHT TO TRIAL BY A JURY, AND (4) ANY ACTION MUST BE BROUGHT ON AN INDIVIDUAL BASIS AND NEITHER PARTY MAY JOIN IN AN ACTION OR ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS. Notwithstanding any provision in this Agreement, no Party will bring any claim, demand, action, lawsuit, or arbitration based on this Agreement if either (i) the applicable statute of limitations has expired, or (ii) eighteen (18) months has elapsed after the date the Party discovered or reasonably should have discovered (including constructive discovery) such claim, whichever comes first.

11.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute a duplicate original, but all counterparts together will constitute a single agreement.

11.14 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, proposals, understandings, and communications, both written and oral. The DPA and any end-user license agreement or other terms provided to Client during the course of business are incorporated into and made part of this Agreement by reference. This Agreement may only be modified or amended in writing and signed by both Parties. In the event of a conflict between this Agreement and an Order Form or SOW, the terms of this Agreement govern unless specifically agreed in writing between the Parties. If there are any changes or updates to applicable laws, regulations, rules, standards, interpretations, or other external guidelines, Trustwave may, upon notice to Client, make appropriate revisions to the scope and pricing for any Services that are affected by such changes or updates.

Exhibit A
Region Specific Terms for Europe, Middle East, Africa, and United Kingdom

If Client is located in Europe, the Middle East, Africa, or the United Kingdom, the following terms are incorporated into the Agreement:

1. Section 9 is amended in its entirety as follows:

9 LIMITATIONS OF LIABILITY & DISCLAIMER OF WARRANTIES

9.1 Limits by Law. Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited any liability arising from (i) fraud, fraudulent misrepresentation, personal injury, or death caused by negligence, recklessness, or willful misconduct, (ii) Trustwave's deliberate default under this Agreement, or (iii) breach of the terms implied by Section 2 of the Supply of Good and Services Act 1982.

9.2 General. SUBJECT TO SECTION 9.1, TRUSTWAVE WILL NOT BE LIABLE TO CLIENT 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 ONE AND ONE QUARTER (1.25) TIMES ANY FEES PAID TO TRUSTWAVE BY CLIENT IN THE TWELVE MONTHS PRECEDING THE CLAIM, (3) ANY OUTAGES OR SLOW DOWNS OF CLIENT'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 CLIENT RESULTING FROM THE PERFORMANCE OF ANY TEST, UNLESS SUCH ARE THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT.

9.3 Indirect Damages. SUBJECT TO SECTION 9.1, 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.

9.4 Disclaimer of Warranty. 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 EQUIPMENT, SERVICES, OR TPP PROVIDED INCIDENTAL TO THE SERVICES UNDER THIS AGREEMENT. Trustwave does not warrant that the Equipment or Services are offered without defect or error, or that the operation of the Equipment or availability of the Services will be uninterrupted or error-free. The only warranties for TPP are set forth in all applicable TPP Agreements. To the extent Client is subject to TPP Agreements, Client agrees to indemnify Trustwave against all damages which Trustwave may incur in connection with Client's violation of an applicable TPP Agreement. Furthermore, Client agrees:

9.4.1 receiving the Services or purchasing TPP does not guarantee Client's compliance with any legal obligation or that Client's information systems will be secure;

9.4.2 Client is responsible for managing and maintaining access rights and logical security, system security, database security, and other information security for its own networks, platforms, and systems; and

9.4.3 Client is responsible at all times for making its own assessments and judgments regarding the configuration and suitability of its chosen security solutions.

2. Section 11.11 is amended in its entirety as follows:

11.11 Governing Law. This Agreement will be governed by and construed in accordance with the laws of England and Wales, without giving effect to conflict of law principles.

3. Section 11.12 is amended in its entirety as follows:

11.12 Dispute Resolution. “**Dispute**” means any dispute or controversy arising out of or relating to any interpretation, construction, performance, or breach of this Agreement, any Order Form, or any SOW.

11.12.1 Inter-Party Dispute Settlement. If a Party wishes to identify a Dispute, it will provide written notice to the other Party, detailing the nature of such a Dispute. The Parties will negotiate in good faith and resolve any Dispute.

11.12.2 Arbitration. If the Parties cannot resolve a Dispute under Section 11.12.1 within thirty (30) days of notice of a Dispute, any such Dispute will be settled by confidential arbitration to be held in London, England, in the English language, with one (1) arbitrator, and in accordance with the rules then in effect of the London Court of International Arbitration (“**LCIA**”), which rules are deemed incorporated by reference.

11.12.3 Venue and Jury Waiver. If the Parties cannot resolve a Dispute under Section 11.12.1 and a final decision is not reached or available under Section 11.12.2, or, if for any reason a Dispute must proceed in court as a lawsuit: each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute (including non-contractual Disputes) arising out of or in connection with this Agreement or its subject matter or formation. Notwithstanding any provision in this Agreement, no Party will bring any claim, demand, action, lawsuit, or arbitration based on this Agreement if either (i) the applicable statute of limitations has expired, or (ii) eighteen (18) months has elapsed after the date the Party discovered or reasonably should have discovered (including constructive discovery) such claim, whichever comes first.

Exhibit B

Region Specific Terms for Australia & New Zealand

If Client is located in Australia or New Zealand, the following terms are incorporated into the Agreement:

1. Section 7 is amended in its entirety as follows:

7 WARRANTIES

7.1 Statutory Warranties. Nothing in this Agreement excludes, restricts, or modifies any condition, warranty, right, or remedy conferred on the Parties by the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law (“**ACL**”) or any other applicable law that cannot be excluded, restricted, or modified by separate agreement.

7.1.1 If Trustwave is liable to Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, Trustwave's total liability to Client for that failure is limited to, at the option of Trustwave:

7.1.1.1 in the case of services, the resupply of the services or the payment of the cost of resupply;
and

7.1.1.2 in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

2. Section 9 is amended in its entirety as follows:

9 LIMITATIONS OF LIABILITY & DISCLAIMER OF WARRANTIES

9.1 General. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRUSTWAVE WILL NOT BE LIABLE TO CLIENT 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 CLIENT IN THE TWELVE MONTHS PRECEDING THE CLAIM, (3) ANY OUTAGES OR SLOW DOWNS OF CLIENT'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 CLIENT RESULTING FROM THE PERFORMANCE OF ANY TEST, UNLESS SUCH ARE THE RESULT OF TRUSTWAVE'S GROSS NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT.

9.2 Indirect Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, 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.

9.3 Disclaimer of Warranty. ANY REPRESENTATION, WARRANTY, CONDITION OR UNDERTAKING THAT WOULD BE IMPLIED IN THIS AGREEMENT BY LEGISLATION, COMMON LAW, EQUITY, TRADE, COURSE OF DEALING, CUSTOM OR USAGE IS EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. Trustwave does not warrant that the Equipment or Services are offered without defect or error, or that the operation of the Equipment or availability of the Services will be uninterrupted or error-free. The only warranties for TPP are set forth in all applicable TPP Agreements. To the extent Client is subject to TPP Agreements, Client agrees to indemnify Trustwave against all damages which Trustwave may incur in connection with Client's violation of an applicable TPP Agreement. Furthermore, Client agrees:

9.3.1 receiving the Services or purchasing TPP does not guarantee Client's compliance with any legal obligation or that Client's information systems will be secure;

9.3.2 Client is responsible for managing and maintaining access rights and logical

security, system security, database security and other information security for its own networks, platforms, and systems; and

9.3.3 Client is responsible at all times for making its own assessments and judgments regarding the configuration and suitability of its chosen security solutions.

9.3.4 Client will be solely responsible for all costs associated with repairing or replacing any Equipment damaged by or as a result of (i) accident, (ii) unusual physical, electrical, or electromagnetic stress, (iii) neglect, (iv) misuse, (v) failure of electric power, air conditioning or humidity control, (vi) causes other than ordinary use, or (vii) Client's breach of its obligations under this Agreement.

3. The following paragraph is added to the end of Section 10 as follows:

10.3 Trustwave may collect Personal Information or Confidential Information directly from Client, Client's end users, or Client's relevant personnel, and also during Trustwave's ongoing relationship with Client, Client's end users, or relevant personnel. Trustwave may use it to supply products and services to Client, and for the other purposes described in Trustwave's privacy policy. Without it, Trustwave may not be able to supply products or services in accordance with this Agreement. Client agrees that Trustwave may access, share, transfer or store such Personal Information or Confidential Information within Trustwave companies and with a number of other service providers and partners for these purposes, some of whom may be outside of Australia. More information about Trustwave's privacy practices, how to access or correct individual records, or make a complaint, can be found at: <https://www.trustwave.com/en-us/legal-documents/privacy-policy/>.

4. Section 11.11 is amended in its entirety as follows:

11.11 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without giving effect to conflict of law principles. Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each Party irrevocably waives any right it has to object to the venue of any legal process in the courts described in this clause on the basis that: any proceeding arising out of or in connection with this Agreement has been brought in an inconvenient forum; or the courts described in this clause do not have jurisdiction.

5. Section 11.12 is amended in its entirety as follows:

11.12 Dispute Resolution. "**Dispute**" means any dispute or controversy arising out of or relating to any interpretation, construction, performance, or breach of this Agreement, any Order Form, or any SOW.

11.12.1 Inter-Party Dispute Settlement. If a Party wishes to identify a Dispute, it will provide written notice to the other Party, detailing the nature of such a Dispute. The Parties will negotiate in good faith and resolve any Dispute.

11.12.2 Mediation. If the Parties cannot resolve a Dispute under Section 11.12.1 within thirty (30) days of notice of a Dispute, the Parties must participate in mediation in accordance with this section. Neither Party may commence court or arbitration proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that Party has participated in a mediation in accordance with this section. Compliance with this section is a condition precedent to the right of any Party to commence litigation or arbitration arising from, or in connection with, the Dispute. The Parties will agree a mediator within fourteen (14) days of either Party giving the other Party written notice of its intention to invoke mediation. If the Parties cannot agree on a mediator, then the Dispute will be referred to the Australian Disputes Centre ("**ADC**"). All mediation proceedings will be conducted in accordance with the ADC Mediation Guidelines. The mediation will take place in Sydney, New South Wales, Australia. The Parties will pay the mediator fees equally and each pay their own counsel fees and expenses. The existence, content or result of any mediation and any information, material or documentation produced, exchanged, or used in any way during the mediation will be designated as confidential.

11.12.3 Limitation of Claims and Jury Waiver. If the Parties cannot resolve a Dispute under

Section 11.12.1 and a settlement is not reached or available under Section 11.12.2, or, if for any reason a Dispute proceeds in court as a lawsuit: (1) BOTH PARTIES WAIVE ANY RIGHT TO TRIAL BY A JURY, AND (2) ANY ACTION MUST BE BROUGHT ON AN INDIVIDUAL BASIS AND NEITHER PARTY MAY JOIN IN AN ACTION OR ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS. Notwithstanding any provision in this Agreement, no Party will bring any claim, demand, action, lawsuit, or arbitration based on this Agreement if either (i) the applicable statute of limitations has expired or (ii) eighteen (18) months has elapsed after the date the Party discovered or reasonably should have discovered (including constructive discovery) such claim, whichever comes first.