

# Trustwave Master Services Agreement

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This Trustwave Master Services Agreement (“**Agreement**”), dated as of the date last executed below (“**Effective Date**”), is entered into by Trustwave Ltd., incorporated and registered in England and Wales (company number 05107724), whose registered office is at New Penderel House, 4th Floor, 283-288 High Holborn, London, WC1V 7HP, England (“**Trustwave**”), and the client indicated on the Order Confirmation or SOW (“**Client**”, and together with Trustwave, the “**Parties**”, and each, a “**Party**”). 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 and software licensed to Client by Trustwave and used for the provision of and form a part of the Services (including without limitation, any portal and data log collectors).
- 1.2 “**Order Confirmation**” means the order form executed by the Parties and made subject to this Agreement which identifies the Services, Fees, other transactional information, and scope.
- 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.
- 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 Confirmation 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.
- 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.
- 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 Confirmation or SOW (collectively, the “**Services**”).
- 2.2 Client Information. Client will provide Trustwave with the information described in an Order Confirmation 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.
- 2.3 Annualized Services. Client must use any annualized Services within each year of the term of the applicable SOW or Order Confirmation. 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 Confirmation or SOW and Purchase Order (the “**Fees**”). Travel and expenses are not included in the Fees and will be billed separately as set forth in the applicable Order Confirmation 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 (including registration, participation, and payment processing fees) and Trustwave may invoice such fees with other fees due under this section or on a separate invoice.
- 3.2 Payment Terms. Trustwave will begin invoicing for the Services upon execution of the applicable Order Confirmation or SOW. Client will pay Trustwave’s invoices within thirty (30) days following the date of invoice (the “**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, royalty-free license to access and use the Services and Equipment during the term of the applicable Order Confirmation 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 by receiving the Services. 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.
- 4.2 Data. 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 ("**Data**"). Client grants to Trustwave a limited, non-exclusive license to use Data during the Term. During and after the Term, Trustwave retains the right to use the Data or Data aggregations for any reasonable purpose, provided such Data is anonymized and does not contain information identifying Client or disclose any of Client's Confidential Information.
- 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 information or documentation disclosed by either Party (the "**Discloser**") to the other Party (the "**Recipient**") (including without limitation, documents, data centers, prototypes, samples, Equipment, all 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 when disclosed; (ii) becomes publicly known after disclosure through no action or inaction of the Recipient; (iii) is already in the possession of the Recipient at the time of disclosure, as the Recipient can demonstrate through objective time-stamped evidence; (iv) is obtained by the Recipient from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information; or (vi) 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 Confirmation 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 Confirmation 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, and which are provided to the Party. 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. 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 Third Party Sponsor. If the Services are sponsored by a third party, such as an acquiring bank, legal counsel, management company, or franchisor, Client will provide Trustwave with written notice of such sponsorship and will authorize Trustwave to disclose information related to the Services and resulting reports to such third-party sponsor.
- 5.5 No Representations. Trustwave's obligations under 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 Confirmation 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 (the "**Term**"). Unless otherwise specified, each Order Confirmation or SOW shall commence on the date executed by both Trustwave and Client and shall automatically renew for additional terms with the same duration as the initial term unless a Party provides the other with written notice of its intent not to renew at least ninety (90) days prior to the end of the then-current term.
- 6.2 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 Services are in effect at such time. Each Party may terminate a Service only 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 any term, condition or provision of this Agreement or the applicable Order Confirmation 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 Confirmation, 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 Confirmation, Trustwave discontinues any Service, then 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). Rights and obligations under this Agreement which by their nature should survive will remain in effect after the termination of this Agreement.

## 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, and in response to written notice of a warranty claim by

Client, re-perform the Services to conform to this standard 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 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 Client's obligations hereunder.

## **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 provision.
- 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 specified otherwise in the applicable Order Confirmation or SOW, Client represents and warrants that it is the ultimate person to use or consume all Services provided pursuant to this Agreement.

## **9 THIRD PARTY PRODUCTS**

- 9.1 TPP License. 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 license for the Term, to use TPP for Client's internal operations and maintenance purposes in accordance with this Agreement, and not for commercial distribution or other trade dealing.
- 9.2 TPP Payments. Trustwave, acting in its capacity as a reseller for the TPP vendor, will invoice Client for TPP. Client appoints Trustwave as its agent for ordering, accepting delivery and making payment to the TPP vendor on Client's behalf.
- 9.3 TPP Warranties. Trustwave makes no warranties, express or implied, as to TPP. The only warranties for TPP are set forth in all applicable TPP Agreements.
- 9.4 TPP Indemnity. Client agrees to indemnify Trustwave against all damages which Trustwave may incur in connection with Client's violation of an applicable TPP Agreement.

## **10 LIMITATION OF LIABILITY & DISCLAIMER OF WARRANTIES**

- 10.1 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.
- 10.2 SUBJECT TO SECTION 10.1, 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.

- 10.3 SUBJECT TO SECTION 10.1, 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.
- 10.4 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 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. Furthermore, Client acknowledges and understands that:
- 10.4.1 Receiving the Services or purchasing TPP does not guarantee Client's Payment Card Industry ("PCI") compliance or that Client's information systems will be secure;
  - 10.4.2 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
  - 10.4.3 Client is responsible at all times for making its own assessments and judgments regarding the configuration and suitability of its chosen security solutions.

## 11 TERMS APPLICABLE TO CERTAIN SERVICES

If Trustwave performs PCI Services for Client, the following will apply:

- 11.1 **PCI SSC & ROC.** Client 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. Client authorizes Trustwave to release a redacted copy of Client's report on compliance as issued by SecureTrust, a division of Trustwave ("**ROC**") to the PCI Security Standards Council ("**SSC**") upon the PCI SSC's written request. Trustwave will provide Client with notice of such request from the PCI SSC. In the event Client suffers a credit card compromise, Client authorizes Trustwave to release a copy of its ROC to the credit card associations upon the credit card associations' written request. Trustwave will provide Client with notice of such request from the credit card association. Finally, Client authorizes Trustwave to release a copy of Client's ROC to Client's acquiring bank. Trustwave will have the right to retain a copy of Client's information solely as necessary for Trustwave to comply with the PCI SSC data retention requirements for Qualified Security Assessors.
- 11.2 Client acknowledges and accepts that any PCI-related Services, including but not limited to the issuance of ROCs, will be performed by employees of SecureTrust in accordance with this Agreement. All terms of this Agreement applicable to Trustwave, including but not limited to limitations of liability and compensation, will apply equally to SecureTrust.
- 11.3 If Client purchases a digital certificate, Client's use of such certificate is subject to and governed by the terms and conditions in the applicable Certification Practice Statement(s), Certificate Policy(ies), and Subscriber Agreement provided separately.

## 12 DATA PROTECTION

Each Party will comply with all the obligations imposed under the data protection laws applicable to the Parties, as amended from time to time ("**Data Protection Laws**") for the purposes of processing personal information as defined in such Data Protection Laws ("**Personal Information**"), including the following:

- 12.1 ensure that it has all necessary notices and consents are in place to enable lawful transfer of the Personal Information to be shared between the Parties under this Agreement;
- 12.2 process the Personal Information only for purposes of this Agreement;
- 12.3 not disclose or allow access to the Personal Information to anyone other than the Parties or other than permitted by this Agreement; and

12.4 ensure that it has in place appropriate technical and organizational measures in accordance with Data Protection Laws.

If the European General Data Protection Regulation (EU/2016/679) applies to Personal Data of Client, the Trustwave Data Protection Agreement located at <https://www.trustwave.com/en-us/legal-documents/contract-documents> (“**DPA**”) will apply.

### **13 GENERAL**

- 13.1 Compliance with Laws. In performing its obligations under this Agreement, 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. Client also agrees to comply with the anti-corruption laws of the United States, including the Foreign Corrupt Practices Act. This Agreement can be terminated at any time by Trustwave if it determines, in its sole and exclusive judgment, that Client, Client’s affiliates or any of its or their directors, officers, employees, agents or other representatives is, might be or is about to be engaged in or involved in any activity or relationship that could be or is considered a violation of U.S. export control, sanctions, or anti-corruption laws and regulations, without further liability or obligation under both U.S. and local laws. Without limitation, Client will comply with applicable payment term restrictions as set forth by U.S. export control, sanctions, or anti-corruption laws and regulations.
- 13.2 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 is null and void. No assignment or delegation relieves Client of its obligations under this Agreement.
- 13.3 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 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.
- 13.4 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, Westminster Tower, 3 Albert Embankment, London, SE1 7SP, England, Attn: Legal Department, Email: [legal@trustwave.com](mailto:legal@trustwave.com), and (ii) in the case of Client, the address and email address set forth on the signature page below. Notices will be deemed effective on the date of mailing (for certified or registered mail) or the date that receipt is confirmed (for email). Client agrees to accept communications from Trustwave via email.
- 13.5 Relationship. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to create or imply a partnership, joint venture, agency relationship or contract of employment.
- 13.6 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.
- 13.7 Subcontractors. Client expressly consents to Trustwave’s right to use of subcontractors in connection with the performance of Services, provided that Trustwave will remain responsible for its obligations under this Agreement.
- 13.8 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.
- 13.9 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.
- 13.10 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.
- 13.11 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.

- 13.12 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 Confirmation, or any SOW.
- 13.12.1 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 use reasonable efforts to negotiate in good faith and resolve any Dispute.
- 13.12.2 Arbitration. If the Parties cannot resolve a Dispute under Section 13.12.1 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.
- 13.12.3 Venue and Jury Waiver. If Parties cannot resolve a dispute under Section 13.12.1 and a final decision is not reached or available under Section 13.12.2, 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.
- 13.13 Incorporation by Reference. Where and if applicable, the Service Description(s), DPA, end user license agreement (“**EULA**”), and TPP Agreement(s), which are located at <https://www.trustwave.com/en-us/legal-documents/contract-documents/>, are incorporated into and made a part of this Agreement by reference.
- 13.14 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. 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 Confirmation 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 (including without limitation the PCI Data Security Standard or the Payment Application Data Security Standard), 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.