

## Trustwave Master Services Agreement

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This Agreement, dated as of the Effective Date, is entered into by Trustwave Government Solutions, LLC, a Delaware corporation, with a principal address of 1925 Isaac Newton Square, Suite 400, Reston, VA, 20190, and the Ordering Activity under GSA Schedule contracts identified in the Purchase Order or Order Form (“Client”). In consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### 1. Definitions.

- a. **“Agreement”** shall refer to this Trustwave Master Services Agreement between Trustwave and Client.
- b. **“Anti-Bribery Laws”** shall mean all applicable anti-bribery laws including but not limited to the Prevention of Corruption Act (Cap. 241) and the Penal Code (Cap. 224) of Singapore, UK Bribery Act 2010, U.S. Foreign Corrupt Practices Act and Australian Criminal Code Act 1995, as effective during the term of this Agreement.
- c. **“Client”** shall refer to the Ordering Activity under GSA Schedule contracts identified in the Order Form or SOW purchaser and/ or licensee or the Services as signatory to this Agreement.
- d. **“Client Group Companies”** shall mean the Client as well as any of its applicable wholly owned subsidiaries and parent companies.
- e. **“Client Premises Equipment”** or **“CPE”** means any equipment licensed to Client by Trustwave and used by Trustwave for provision of the Services.
- f. Reserved.
- g. **“Claims”** means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including court costs and attorney fees actually incurred).
- h. **“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 Trustwave’s service portals), including all copies and derivatives thereof, regardless of format. 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 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 shall limit any such required disclosure to the information explicitly requested.
- i. **“Data”** means any 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.
- j. **“Data Protection Laws”** shall mean the obligations imposed under the data protection laws applicable to the parties, as amended from time to time.
- k. **“Dispute”** shall mean any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement.
- l. **“DPA”** shall refer to the Trustwave Data Protection Agreement attached hereto, as defined in Section 13.
- m. **“EULA”** shall mean the applicable end user license agreements for use or purchase of software or third-party products and/or services.
- n. **“Feedback”** shall mean any feedback, ideas, or suggested improvements provided to Trustwave by Client.
- o. **“Fees”** shall mean the Trustwave Service fees and expenses as set forth in the Order Form or SOW in accordance with the GSA Schedule Pricelist, as applicable, and as further defined in Section 4.
- p. **“GDPR”** shall refer to the European General Data Protection Regulation (EU/2016/679).

- q. **“High Risk Activities”** means 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.
- r. **“Order Form”** shall refer to an order form executed by the parties and made subject to the terms of this Agreement, which identifies the Services, Fees, SKU and other transactional information and scope.
- s. **“PCI SSC”** shall refer to the Security Standards Counsel.
- t. **“Personal Information”** shall have the same meaning as defined in the Data Protection Laws.
- u. **“Purchase Order”** means a purchase order or purchase order exemption form, as the same may be amended in writing by Client and Trustwave from time to time.
- v. **“QSA”** shall refer to a Qualified Security Assessor Company, as certified by the PCI SSC.
- w. **“ROC”** shall mean the PCI DSS Report on Compliance, as issued by SecureTrust.
- x. **“Secure Trust”** shall refer to SecureTrust, Inc., Trustwave Holdings’ wholly owned subsidiary, which performs all PCI-related Services.
- y. **“Services”** means the services, deliverables and/or products to be provided to Client by Trustwave as described in an Order Form or SOW, as applicable.
- z. **“Service Description”** means the description of work activities and deliverables, if any, applicable to the Services and included as part of the Order Form or SOW, as applicable.
- aa. **“Statement of Work”** or **“SOW”** means the agreement between the parties, made subject to this Agreement, and identifies and includes the Services, Fees, SKUs, Service Descriptions and other transactional information and scope.
- bb. **“TPP”** are third party products, services, equipment and software that comprise, are integrated into, or used in connection with the Services.
- cc. **“TPP Agreements”** are the end user agreements between Client and the applicable third party available as a “click-through” or “shrink-wrap” agreement or that otherwise accompanies the TPP.
- dd. **“Trustwave”** shall mean Trustwave Government Solutions, LLC.
- ee. **“Trustwave IP”** shall include, without limitation, any of Trustwave Holdings, Inc. or Trustwave’s inventions, technological innovations, discoveries, designs, formulas, know-how, processes, business methods, patents, trademarks, service marks, copyrights, computer software, ideas, creations, writings, illustrations, improvements to all such property, and all recorded material defining, describing, or illustrating all such property, whether in hard copy or electronic form.
- ff. **“Trustwave Technology”** means 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.

## 2. **Effective Date/Term.**

This Agreement shall commence on the Effective Date and shall continue in full force and effect thereafter until terminated in accordance with the provisions of this Agreement. Unless provided otherwise in the applicable Order Form or SOW, each such Order Form or SOW, shall commence on the date executed by both Trustwave and Client with an initial term as set forth therein and may be renewed for additional terms with the same duration as the initial term by executing a Order Form in writing.

## 3. **Obligations.**

- a. Trustwave shall provide Client the Services.
- b. Client shall provide Trustwave with the information described in the applicable Order Form or SOW and as Trustwave may otherwise reasonably request in order to perform the Services.
- c. Client acknowledges that Trustwave will rely upon the accuracy and completeness of information provided by Client and its representatives and affiliates and that Trustwave’s performance is dependent on Client’s timely and effective satisfaction of Client’s responsibilities under this Agreement and the applicable Order Form or SOW, and timely decisions and approvals by Client. Trustwave shall not be liable for any breaches of this Agreement or the applicable Order Form or SOW, or any damages resulting therefrom to the extent that any such breach is due to (i) a failure by Client or any third party retained by, or under the control of Client to provide data or materials that Client or such third party is required to provide to Trustwave or required by Trustwave to perform the Services, (ii) a failure by Client to timely and accurately perform its responsibilities as set forth in this Agreement, or (iii) a failure by Client to obtain consents, approvals or access for Trustwave.
- d. In the event Client purchases any equipment from Trustwave, Client or its designated agent or contractor shall have sole responsibility to install and configure the purchased equipment to operate in Client’s

networks.

- e. Annualized Services must be used each year during the term of the applicable Service Description and such Services cannot be used and/or credited in subsequent years.

#### 4. **Compensation.**

- a. **Fees.** Client shall pay the GSA Schedule Contractor on behalf of Trustwave the 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. Client agrees to pay travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Client shall only be liable for such travel expenses as approved by Client and funded under the applicable ordering document. Client will be charged a reinstallation or relocation fee in accordance with Trustwave's current market rates in accordance with the GSA Schedule Pricelist in the event of a relocation of any CPE, to be billed to Client separately upon Client's written request for a relocation or Trustwave's receipt of notice thereof. Trustwave shall have the right upon each anniversary of the effective date of a Service or Purchase Order to increase the Fees therein by the amount listed in the then current GSA Schedule Pricelist. Where Client designates use of a third-party payment processor network, Client shall be responsible for payment of all fees and charges associated with use of such network (including registration, participation, and payment processing fees).
- b. **Payment Terms.** Trustwave will begin invoicing for the Services as specified in the applicable Order Form or SOW. Client shall pay Trustwave's invoices within thirty (30) days following the receipt date of invoice. Setup Fees and Fees listed on the Order Form in accordance with the GSA Schedule Pricelist for any purchased equipment are due and payable upon execution of this Agreement and/or the applicable Order Form or SOW.
- c. **Late Payment.** Any amounts not paid within thirty (30) days of the date due shall accrue interest at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.
- d. **On-Site Visits.** If the Services contemplate that Trustwave shall perform any part of the Services on-site (including, without limitation, in-person installation or delivery services or consultant appointments), Client shall notify Trustwave in writing of any changes or cancellations relevant to any such on-site visit as soon as practicable, but in no event less than three (3) business days in advance of the scheduled time for such visit.
- e. **Taxes, Shipping, Title, & Risk of Loss.** Vendor shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. All products shipped within the United States will be shipped by Trustwave F.O.B. destination. All products shipped to a final destination outside of the United States will be shipped by Trustwave EXW (Ex Works) IncoTerms 2010. 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 Client upon shipment; title to software shall remain with Trustwave. Title and risk of loss of TPP shall be in accordance with the TPP Agreements.

#### 5. **Proprietary Rights.**

- a. **Trustwave Technology and IP.** The Trustwave Technology and any 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, Client 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. Client 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 Data. Trustwave retains the right to use the Data or aggregations thereof for any reasonable purpose, provided such Data is anonymized and does not contain information identifying Client or disclose any of Client's Confidential Information.
- c. **Publicity, Trademarks and Logo.** Without prior written approval signed by an authorized representative of Trustwave, Client shall 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. Trustwave may use Client's name and logo in Trustwave's marketing materials and activities.

#### 6. **Confidentiality.**

- a. Recipient agrees not to use any Confidential Information of the Discloser for any purpose other than as contemplated by this Agreement or any Order Form or SOW. Recipient agrees not to 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 in order to evaluate or engage in discussions concerning the Services. 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. Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Discloser's Confidential Information. Trustwave recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.
- b. Reserved.
- c. In the event the Services are sponsored by a third party, such as an acquiring bank, legal counsel, management company, or franchisor, Client shall provide Trustwave with written notice of such sponsorship and hereby authorizes Trustwave to disclose information related to the Services and resulting reports to such third-party sponsor.

## 7. **Termination.**

- a. **Termination Rights.** Trustwave 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. Client may terminate this Agreement for convenience in accordance with FAR Clause 52.212-4(l). Trustwave party may terminate a Service only for cause (as set forth below) or as set forth in the applicable SOW.
- b. **Termination for Cause.**
  - i. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Trustwave shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer;
  - ii. Reserved;
  - iii. Reserved; or
  - iv. 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.
- c. **Licensed CPE Return.** Within ten (10) business days after the date of termination or discontinuance of this Agreement or the applicable Service for any reason, Client agrees to return, at its sole expense without setoff to any fees owed, all CPE(s) to Trustwave at the above-referenced address, or such other address as Trustwave may specify in writing. Client shall retain the risk of loss until such CPE is delivered to Trustwave. Client shall be solely responsible for, and shall reimburse Trustwave for, any damage caused to the CPE prior to the return of the CPE to Trustwave, except to the extent such damage is caused by Trustwave personnel.

**End of Life.** If, during the term of this Agreement, Trustwave discontinues any Service, then Trustwave shall provide Client with written notice of such discontinuation as soon as reasonably practicable but no less than one-hundred and eighty (180) 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. In the event that Trustwave discontinues a Service that Client has contracted for, Client shall be entitled to a pro rata refund for any fees paid not used

- d. Reserved
- e. **Effect of Termination.** If Client terminates this Agreement or a Service for any reason, 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.. Rights and obligations under this Agreement which by their nature should survive shall remain in effect after the termination of this Agreement.
- f. **Termination for Convenience.** Client may terminate this Agreement without cause in accordance with FAR Clause 52.212-4(l).

## 8. **Trustwave 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 Client within ninety (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, Client 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. Client 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 Client's obligations hereunder.
  - c. Purchased Equipment. Trustwave warrants to Client, for the benefit of Client only, that any purchased equipment (excluding software) furnished by Trustwave pursuant to this 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, Client 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, Client 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 Client's obligations hereunder. This clause shall not apply to TPP.
- 9. Client Warranties.** Client represents and warrants to the following. Without limiting any other remedy that Trustwave may have, Client 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 Client's breach of this provision.
- a. Client's Technology and Information. 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.
  - b. Client's Use of Scanning Services. Client represents and warrants that it has full right, power, and authority to consent to have Trustwave, either directly or through any services, scan the IP address and/or URL and/or domain names identified to Trustwave by Client for scanning, whether electronically or by any other means, whether during initial enrollment or thereafter. If applicable, Client 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. Client 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.
  - c. Client's Use of Trustwave Technology. Client's use of Trustwave portals, reports, and scanning solution is subject to the following restrictions: (i) Client may use the services and portals only to scan IP addresses, URLs and domain names owned by and registered to Client; (ii) portals, services, and reports may only be used for the stated purposes in this Agreement for Client's internal business purposes in accordance with all applicable laws (including any export control laws); and, (iii) Client shall limit access to portals to only those employees and/or contractors who have an obligation of confidentiality with Client and have a requirement for such access on a "need to know" basis. Client shall be solely responsible for disabling portals accounts for those employees and/or contractors who no longer require access. Client agrees that all Trustwave portals, including without limitation its functionality and contents, are confidential information, and Client's use and/or access to any Trustwave portals is subject to the terms of this Agreement. Client 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; (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, (iv) merge TPP or any part of the Service with other software; or attempt (i), (ii), (iii) and/or (iv) above.
  - d. End User. Unless specified otherwise 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.

**10. TPP.**

- a. End User Agreements. Client hereby accepts and agrees to comply with all applicable TPP Agreements attached hereto. Client's use of TPP is conditioned upon such acceptance. TPP Agreements may be amended from time to time. If Client does not accept the amended TPP Agreement, Client must cancel the Service impacted by such TPP. Trustwave may suspend or cancel Client's access to or right to use TPP if Client does not comply with or respond to a request from Trustwave or a TPP vendor to accept or agree to comply with an applicable TPP Agreement. All applicable TPP Agreements attached hereto are incorporated by reference and made a part of this Agreement.
- b. 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 of the Agreement, to use TPP for Client's internal operation and maintenance purposes in accordance with the terms of this Agreement, and not for commercial distribution or other trade dealing.
- c. TPP Payments. The GSA Schedule Contractor acting on behalf of Trustwave, acting in its capacity as a reseller for the TPP vendor, will invoice Client for TPP.
- d. 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.
- e. Reserved.
- f. Other Approvals & Licenses. Where Client uses third-party products or services that are not provided by Trustwave, Client is responsible for obtaining all necessary approvals and licenses to authorize use of such third-party products or services in conjunction with the Service.

**11. Limitation of Liability & Disclaimer of Warranties**

- a. TRUSTWAVE SHALL 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 UNDER THE APPLICABLE SOW OR ORDER FORM, (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. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
- 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, Client acknowledges and understands that:
  - i. The monitoring for availability of dynamically addressed CPE devices may result in a greater time window for device outage detection;
  - ii. Receiving the Services or purchasing TPP does not guarantee Client's PCI compliance or that Client's information systems will be secure;
  - iii. 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;
- iv. Client is responsible at all times for making its own assessments and judgments regarding the configuration and suitability of its chosen security solutions.

## **12. Terms Applicable to Certain Services.**

- a. In the event Trustwave performs Payment Card Industry-related services for Client, the following shall apply:
  - i. 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 hereby authorizes Trustwave to release a redacted copy of Client's ROC to the PCI SSC upon the PCI SSC's written request. Trustwave shall 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 shall 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 shall 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.
  - b. 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), Subscriber Agreement and other related documentation.
  - c. Client hereby 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 the terms of this Agreement. All terms of this Agreement applicable to Trustwave, including but not limited to limitations of liability and compensation, shall apply equally to SecureTrust.
  - d. SecureTrust represents and warrants that it is a QSA Company, as certified by the PCI SSC and that it shall maintain such QSA certification throughout the course of this Agreement and any applicable Service. SecureTrust shall provide Client with written notification of any termination or suspension of its QSA Certification.

## **13. Data Protection.** Each party shall comply with all the obligations imposed under the Data Protection Laws for the purposes of processing Personal Information, including the following:

- a. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Personal Information to be shared between the Parties under this Agreement;
- b. process the Personal Information only for the purposes of this Agreement;
- c. not disclose or allow access to the Personal Information to anyone other than the parties or other than permitted by this Agreement; and
- d. ensure that it has in place appropriate technical and organizational measures in accordance with Data Protection Laws.

## **14. Anti-Bribery and Corruption**

- a. Client represents, warrants and agrees that Client and the Client Group Companies and all of their Personnel (as defined below):
  - i. are in compliance and will remain in compliance with all applicable Anti-Bribery Laws, during the term of this Agreement; and
  - ii. prior to entering into this Agreement have not, and shall not during the term of this Agreement, give or offer to give or authorize to give to any person, or request or accept or authorize the request or acceptance of, directly or indirectly, any gratification, including any gift or consideration of any kind, facilitation payments, or anything of value (including without limitation to cash, cash equivalents like gifts, services, employment offers, loans, travel and entertainment, charitable donations, sponsorships, business opportunities, favorable contracts or giving anything even if nominal in value) as an inducement or reward for doing or not doing, or for having done or not done any action, or for receiving an improper or unfair advantage in relation to this Agreement.
  - iii. Client shall immediately give written notice to Trustwave upon a breach, or suspected breach, of any of its obligations or the obligations of any Client Group Company under this section. For the purposes of this section only, "Personnel" means the Client Group Companies' employees, vendors, subcontractors, contractors, advisers, representatives, agents and any other third parties with whom the Client Group Companies transact.

## 15. **General**

- a. **Compliance with Laws:** Each party shall comply with all federal, state, and local laws and regulations that are applicable to them under this Agreement, and its performance hereunder. Such laws may include and are not limited to trade compliance laws of the United States of America..
- b. **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 Trustwave may assign this Agreement without Client's prior written consent to a successor by way of a merger, acquisition, sale, transfer or other disposition of its assets in accordance with the procedures set forth in FAR 42.1204. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- c. **Feedback.** Client agrees that any Feedback will be Trustwave's exclusive property of Trustwave. To the extent Client owns any rights in the Feedback, it agrees to assign and hereby assigns to Trustwave all right, title and interest in and to the Feedback. Trustwave acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.
- d. **Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).
- e. **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 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 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). Client agrees to accept communications from Trustwave via email.
- f. **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.
- g. **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.
- h. **Subcontractors.** Client 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.
- i. **High Risk Activities.** THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES. ACCORDINGLY, TRUSTWAVE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CLIENT WILL NOT INCORPORATE (WITHOUT THE EXPRESS WRITTEN APPROVAL OF TRUSTWAVE) ANY SERVICES INTO ANY SUCH PRODUCTS.
- j. **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 any of the terms, conditions and covenants of this Agreement shall be construed as a waiver of any succeeding breach of the same or other terms, covenants and conditions hereof.
- k. **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.
- l. **Governing Law.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States, without giving effect to conflict of law principles.
- m. **Reserved.**
- n. **Venue and Jury Waiver.** NOTWITHSTANDING SECTION 16(K), IF FOR ANY REASON A DISPUTE PROCEEDS IN COURT AS A LAWSUIT, BOTH PARTIES AGREE THAT: (1) ANY SUCH DISPUTE SHALL ONLY BE BROUGHT IN ACCORDANCE WITH THE CONTRACT DISPUTES ACT; (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 SHALL BRING ANY CLAIM, DEMAND, ACTION, LAWSUIT OR ARBITRATION BASED ON THIS AGREEMENT OR THE SERVICES PROVIDED BY



TRUSTWAVE IF THE APPLICABLE STATUTE OF LIMITATIONS HAS EXPIRED.

- o. Directives. Client shall immediately notify Trustwave if Client 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, by any court or administrative agency of the United States or any state, by the PCI SSC, 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 Client or any of its affiliates, officers, directors, agents, employees, or subcontractors is involved. Whether or not such notice is given by Client, Client shall directly assist Trustwave in Trustwave's attempt to reduce the burdens of compliance with any such directive.
- p. Export Control. Client 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. Client 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 Client. Client shall indemnify and hold Trustwave harmless from all claims, damages and related expenses (including reasonable attorneys' fees) incurred by Trustwave that result from Client's breach of this provision. TRUSTWAVE SHALL NOT BE LIABLE FOR CLIENT'S VIOLATION OF ANY EXPORT OR IMPORT LAWS, WHETHER UNDER THE UNITED STATES OR FOREIGN LAW.
- q. Incorporation by Reference. Where and if applicable, the terms of the Service Description(s), DPA, EULA(s) and TPP Agreement(s), attached hereto, are incorporated into and made a part of this Agreement by reference.
- r. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between Trustwave and Client regarding the subject matter hereof. All prior or contemporaneous agreements, proposals, understandings and communications between Trustwave and Client regarding the subject matter hereof, whether oral or written, are superseded by and merged into this Agreement. Client acknowledges and agrees that except as expressly set forth in this Agreement, Trustwave has not made and is not making any representation or warranty, oral or written, express or implied, to Client, and Client has not relied and is not relying on any representation or warranty, oral or written, express or implied in entering into this Agreement. This Agreement may not be modified or amended except by a written instrument executed by both Trustwave and Client. 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 Client, make appropriate revisions to the scope and pricing for any Services that are affected by such changes or updates. The terms of any Client 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.

**{SIGNATURE PAGE FOLLOWS}**

{SIGNATURE PAGE TO TRUSTWAVE MASTER SERVICES AGREEMENT}

**SIGNATURES**

IN WITNESS WHEREOF, the parties below have executed this Agreement as of the date indicated below.

**Trustwave:** As a duly elected officer authorized to enter into agreements and contracts on behalf of Trustwave, I hereby provide and accept this Agreement as evidenced by my signature below:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Client:** As a duly authorized representative with the authority to enter into agreements and contracts on behalf of Client, I hereby accept this Agreement as evidenced by my signature below:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Client: \_\_\_\_\_

Date: \_\_\_\_\_

Client Notice  
Information:

Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_