



**MASTER SERVICE AGREEMENT TERMS AND CONDITIONS**  
**Cloud & Professional Services**  
(Version 1/25 | April 1, 2025)

**1. DEFINITIONS.** Capitalized terms shall have the meanings ascribed to them below or elsewhere in this Agreement.

**"Agreement"** means the master services agreement comprised of the Order Form or applicable SOW executed by Trustwell and the Client, which incorporate these Terms and Conditions, Linked Documents and any additional documents expressly incorporated herein by reference.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"API"** means application programming interface(s) enabling the interoperability of the SaaS Applications and the Client system and the retrieval of Client Data. The Order Form will specify whether an API is provided by Trustwell, Client or by a third party on behalf of Client.

**"Applicable Law"** means applicable federal, state, local, and foreign laws, rules, regulations, orders, directives, and other similar instruments including interpretations with the force of law. Applicable Laws: (i) in the case of Trustwell, apply with respect to the operation of its business as a service provider generally to its clients and, (ii) in the case of Client, apply to it as the provider of Client Data and the recipient and user of the Services.

**"Authorized User(s)"** means an individual who is authorized by Client to access and use the Services on behalf of Client, and to whom Client (or Trustwell at Client's request) have supplied a user ID and password. Authorized Users may include, Client's employees, consultants, contractors, agents, including the employees, consultants, contractors and agents of Client's vendors, suppliers and other applicable third parties with whom Client transacts business.

**"Charge Metric"** means the applicable standard of measurement for determining the permitted use and calculating the Fees due as set out in the Order Form.

**"Client"** means the client entity that is the signatory to the Order Form.

**"Client Data"** means any and all data, content and information, including Personal Data: (i) entered, uploaded, submitted, shared, posted, transmitted via the SaaS Applications by Client, or on its behalf; or (ii) described in the applicable Order Form or SOW.

**"Client Materials"** means data, content, information, branding, technology, APIs and other materials and IPR of Client in any format or medium provided to Trustwell for the performance of Services by Trustwell.

**"Confidential Information"** means any non-public, proprietary information obtained by a Party ("**Receiving Party**") whether in oral, written, demonstrative, graphic, electronic, machine readable, or in other tangible or intangible form, that is marked proprietary or confidential or that a reasonable person under similar circumstances would understand it to be proprietary or confidential. Confidential Information includes past, present or future products, services, marketing, research, development, information technology or business activities of the disclosing Party ("**Disclosing Party**") or its Affiliates or their respective employees, customers or suppliers and any analyses, compilations, studies or other documents prepared by the Disclosing Party that contain or otherwise reflect such information. Without limiting the generality of the foregoing, Client's Confidential Information includes Client Data; Trustwell's Confidential Information includes the Services, Trustwell Content (including nutritional and regulatory content), and any components thereof.

**"Consulting Deliverables"** means the preparation of Deliverables consisting of assessments, recommendations, reports or other output identified as such in and created pursuant to a SOW.

**"Data Processing Addendum" or "DPA"** means the data processing addendum posted on [www.Trustwell.com/DPA](http://www.Trustwell.com/DPA) or any successor web page, as may be updated from time to time, and is incorporated herein by this reference.

**"Deliverables"** means the tasks or tangible items provided by Trustwell as part of the Professional Services.

**"Documentation"** means, for the SaaS Applications, the technical documentation, specifications and online help documents, including administrator and user guides, made available by Trustwell in the normal course of business in connection with the SaaS Applications, as they may be modified from time to time.

**"IPR"** means intellectual property rights in and to patents, trademarks, service marks, trade and service names, copyrights, database rights and design rights (regardless of registration, and including applications for registration), know-how, moral rights, trade secrets, confidential and proprietary information, all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist anywhere in the world now existing or hereafter arising.

**"Information Security Addendum" or "ISA"** means the security controls for the Services posted on [www.Trustwell.com/ISA](http://www.Trustwell.com/ISA) or any successor web page, as may be updated from time to time and is incorporated herein by this reference.

**“Linked Document(s)”** means Trustwell’s documents contained in URLs or hyperlinks that are expressly referenced in the Agreement, namely these Terms and Conditions and the DPA, ISA, and SLA.

**“Order Form(s)”** means one or more ordering documents for SaaS Applications and incidental services (including any addenda and supplements) that upon execution by the Parties or any of the Parties’ Affiliates, are subject to the terms of this Agreement. By entering into an Order Form, a Client’s Affiliate agrees to be bound by the terms of this Agreement as if it were an original Party hereto.

**“Output”** means the output generated from Client Data via the SaaS Applications.

**“Personal Data”** means information pertaining to individuals that is referred to as “personal data”, “personally identifiable information”, “personal information” or other reasonably equivalent terms within the scope of Applicable Laws relating to or impacting privacy, data security and processing of personal data.

**“Professional Services”** means the Deliverables and other services provided pursuant to a SOW, including integration, migration, application management services, success program, and other services that may be project-based or hourly-based, in each case as set out in a SOW.

**“SaaS Applications”** means the Trustwell software-as-a-service applications, and Trustwell Content included therein currently residing on [www.Trustwell.com](http://www.Trustwell.com) (or any successor web page) and its related mobile apps that are specified in an Order Form or as described in the Documentation, including any API provided by Trustwell if so indicated in the Order Form and subject to any restrictions therein. Expressly excluded are Non-Trustwell Applications.

**“Service(s)”** means the SaaS Applications and Support offered by Trustwell as set out in an Order Form, and Professional Services offered by Trustwell as outlined in a SOW. Expressly excluded from this definition are services related to Non-Trustwell Applications.

**“SOW”** means one or more statement of work for the performance of Professional Services (including any addenda and supplements) that upon execution by the Parties or any of the Parties’ Affiliates, are subject to the terms of this Agreement. By entering into an SOW, a Client’s Affiliate agrees to be bound by the terms of this Agreement as if it were an original Party hereto.

**“Support”** means support for the SaaS Applications set out in the applicable Order Form and in accordance with the SLA.

**“Support Policy & Service Level Addendum”** or **“SLA”** means the support policy and service level addendum posted on [www.Trustwell.com/SLA](http://www.Trustwell.com/SLA) or any successor web page, as may be updated from time to time and is incorporated into this Agreement by reference.

**“Trustwell”** means the entity that is the signatory to the Order Form doing business as (dba) Trustwell.

**“Trustwell Content”** means any and all data and information that Trustwell makes available via the SaaS applications, which originate in Trustwell or sourced by it, including nutritional and regulatory databases.

## **2. USAGE RIGHTS AND RESTRICTIONS**

2.1. **Limited Use Rights.** Conditioned upon Client’s compliance with the terms and conditions of this Agreement, including the payment of Fees, Trustwell grants a subscription-based, limited, non-exclusive, non-transferable, non-sublicensable right during the Term to Client and its Authorized Users to access and use the Services for Client’s internal business purposes, to the extent set out in the Order Form within the applicable Charge Metric or to the extent set out in an applicable SOW. Client agrees that it shall not allow any third parties or unauthorized users to access, use or benefit from the Services in any way whatsoever.

2.2. **Use Restrictions.** Client and Authorized Users shall not and shall not permit any third party to: (i) modify, distribute, publish, transmit, display, perform or create derivative works from or based on the Services or any components thereof, (ii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code of the SaaS Applications, (iii) rent, sell, distribute, sublicense, assign, transfer or otherwise make available the Services, whether or not as “paid-for” service, and regardless of the method of dissemination, or otherwise use the Services for the benefit of or on behalf of a third party including through timesharing, operating a service bureau, or as part of a managed service or outsourcing arrangement, (iv) use manual process, automatic device or application or extraction tool to access, monitor, use, download, retrieve, index, extract, scrape, or data mine the Services, (v) copy, frame, mirror, or in any way reproduce or circumvent the navigational structure or presentation of the Services or any component thereof or otherwise defeat, bypass, or circumvent any IPR or other protections implemented in the Services, (vi) bypass or breach any security device or protection used in the Services, (vii) input, upload, transmit, activate or otherwise provide to or through the Services any malware or harmful code or virus, (viii) damage, destroy, deface, disrupt, disable, impair, interfere with, or otherwise disrupt, impede, overburden or harm in any manner the Services or Trustwell’s provision of products and services, (ix) remove, delete, alter, or obscure any IPR or attribution notices or disclaimers, or (x) access the Services for monitoring availability, observing performance or functionality, for benchmarking against another service or competitive analysis of the Services or for the development, provision or use of a competing service or other competitive purpose, or (xi) otherwise access or use the Services in a manner and for purposes not permitted under this Agreement, infringe IPR or violate other rights of any person or entity, or in violation of Applicable Law.

### 3. CLIENT ACCESS AND RESPONSIBILITY

3.1. Compliance. Client expressly acknowledges and agrees that Authorized Users' compliance with the terms of this Agreement is a condition to their enrollment, access to and continued use of the Services and failure to comply may result in suspension or termination. Client is responsible for Authorized Users compliance with this Agreement and Applicable Laws and for all actions and omissions by Authorized Users that would constitute a breach of this Agreement if taken by Client. Client must promptly notify Trustwell if it becomes aware of any suspected or unauthorized access to or use of the Services.

3.2. Access Credentials. Client shall provide Authorized Users with appropriate instructions and precautions to maintain the security and confidentiality of their access credentials. TRUSTWELL SHALL NOT BE RESPONSIBLE FOR ANY MISUSE OF CLIENT OR AUTHORIZED USERS' DATA OR INFORMATION RESULTING FROM THEIR FAILURE TO SECURE THEIR ACCESS CREDENTIALS TO THE SAAS APPLICATIONS.

3.3. Usage of Services. CLIENT SHALL BE SOLELY RESPONSIBLE FOR THE ACCURACY OF ALL CLIENT DATA ENTERED INTO, PROCESSED THROUGH AND DISPLAYED VIA THE SERVICES AND ANY DAMAGE THAT RESULTS FROM OR IS ASSOCIATED WITH CLIENT'S OR AUTHORIZED USERS' USE OF THE SERVICES. CLIENT IS SOLELY RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT AND CONTROL OF THE USE OF THE SERVICES, INCLUDING DETERMINATION OF APPROPRIATE USES THEREOF IN ORDER TO ACHIEVE CLIENT'S INTENDED RESULTS. THE OUTPUT AND DELIVERABLES MAY BE ERRONEOUS, INACCURATE, OR INCOMPLETE AND ARE PROVIDED FOR EDUCATIONAL PURPOSES AND DO NOT CONSTITUTE LEGAL ADVICE. CLIENT IS SOLELY RESPONSIBLE FOR ESTABLISHING AND ENSURING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF THE SERVICES, INCLUDING THE OUTPUT AND DELIVERABLES.

### 4. SUPPORT, SERVICE CHANGES, API, SERVICE PROVIDERS

4.1. Support. Trustwell will provide to Client standard Support for the SaaS Applications at no additional charge, as set forth and in accordance with the service levels set out in the SLA.

4.2. Service Changes. Any of the components of the SaaS Applications may be modified by Trustwell in its sole discretion, including the removal, replacement, and substitution of features or components therein. If Client establishes that a modification materially and adversely diminishes the value of a SaaS Applications, Client may terminate its subscription to the affected SaaS Application or portion thereof, by providing written notice to Trustwell within thirty (30) days following the implementation of the modification by Trustwell.

4.3. Client API. Client acknowledges that the use of the SaaS Applications, including provision of Support is dependent on an API being functional and performant. If an API is developed or sourced by Client, such API shall not interfere with, delay, modify or impact the integrity of the SaaS Applications or the ability to use them. TRUSTWELL DISCLAIMS ALL RESPONSIBILITY AND LIABILITY FOR THE CLIENT API INCLUDING FOR ANY ACCESS, DISCLOSURE, MODIFICATION OR DELETION OF CLIENT'S DATA RESULTING FROM USE OF THE CLIENT API. No Standard Support is provided in connection with any Client API. Client may engage Trustwell, if Trustwell so agrees, under an SOW for API development support.

4.4. Trustwell Subcontractors. Trustwell, in its sole discretion, may utilize third party subcontractors, including its Affiliates ("Subcontractors") in the performance of its obligations under this Agreement and will be responsible for any violations of this Agreement by them.

### 5. PAYMENTS

5.1. Payments. Fees for the Services ("Fees") shall be set out in the Order Form or SOW, applicable and will be calculated in accordance with the Charge Metrics and paid in accordance with the timing set forth in the Order Form or SOW. Payment obligations are non-cancelable, Fees paid are non-refundable, and quantities committed to cannot be decreased during the relevant Order Form term. Unless otherwise stated in the Order Form, invoiced charges are due within thirty days (30) days of the date of invoice. Client is responsible for providing complete and accurate billing and contact information to Trustwell and notifying Trustwell of any changes to such information. Client must notify Trustwell of any invoice disputes within ten (10) days of receipt. Once resolved, payment of disputed invoices will be due immediately. Trustwell will invoice Client in advance and in accordance with the relevant Order Form or SOW. If any undisputed invoiced amount is not received by Trustwell by the due date, then without limiting Trustwell's rights or remedies, (i) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and (ii) Trustwell may condition future renewals on payment terms shorter than those specified in this Section 5.1.

5.2. Suspension. If any undisputed Fees owing by Client under an Order Form or SOW is more than thirty (30) days overdue, Trustwell may, without limiting Trustwell's other rights and remedies, suspend access to the applicable Services to Client until such Fees are paid in full. Trustwell will give Client at least ten (10) days' prior notice that Client's account is overdue, in accordance with Section 16.9, before suspending Client's access to the Services.

5.3. Adjustment. Unless otherwise agreed in the Order Form, at the commencement of each Order Form renewal term, Trustwell reserves the right to increase the annual subscription Fees without notice for the upcoming renewal term, provided that such annual subscription Fees for SaaS Applications shall not rise by more than ten percent (10%) over the rates applied in the preceding Order Form term, provided that if the underlying Charge Metric for the Client's usage has expanded, the rate increase

will be adjusted to capture such increase. Fees for Professional Services may be subject to an annual increase to the prevailing rates at the time, unless otherwise specified in the applicable SOW.

5.4. Scope Changes. In the event Client wishes to broaden the scope of Services, the Parties shall amend or execute a new Order Form or SOW as applicable, covering such additional items. The Parties may agree to adjust the term of the Order Form or SOW and accordingly pro-rate the applicable Fees with respect to such additional items to bring into conformity the billing cycle with respect to all Services provided hereunder. All such adjustments shall be set forth in the applicable Order Form or SOW.

5.5. Taxes. Each Party will pay all applicable taxes in any jurisdiction arising by reason of its performance of its obligations as set forth in this Agreement, including, without limitation, any sales or use taxes and all taxes based upon its net income, gross receipts or assets and all payroll taxes with respect to its employees. State sales taxes, if any, will be determined based on the address provided by Client for invoicing purposes.

5.6. Usage Overages and Reporting. If the actual use of the Services during the applicable measurement period exceeds the Charge Metric limitations, Client will be charged for the overage.

## **6. CONFIDENTIALITY**

6.1. Standard of Care. The Receiving Party shall preserve the Confidential Information of the Disclosing Party in confidence. The Receiving Party shall maintain, at a minimum, the same precautions and standard of care to which a reasonable person in such business would use to safeguard Confidential Information of its own and its clients or suppliers. Other than as permitted hereunder, the Receiving Party shall not, without first obtaining the other Party's written consent, disclose to any third party, or use for its own benefit (except as expressly contemplated herein), Confidential Information, during the Term of this Agreement and thereafter.

6.2. Limited Disclosure. The Receiving Party may disclose Confidential Information on a need-to-know basis to its authorized employees, contractors, agents, auditors, counsel and other representatives performing services for its benefit, solely as required for it to enjoy the benefits conferred by this Agreement and for the Parties to perform their respective obligations hereunder. All such Receiving Party's representatives receiving Confidential Information, shall be bound by non-disclosure obligations consistent with this Agreement and the Receiving Party shall be responsible for any violation by such representatives of the confidentiality obligations set forth herein.

6.3. Legal Requirement. If Confidential Information is required to be disclosed by law, regulation or court order by either Party, such disclosure shall be permitted to the extent legally required, provided that to the extent legally permissible, the Disclosing Party is given reasonable prior notice by the Receiving Party to enable it to seek a protective order or confidential treatment prior to such disclosure by the Receiving Party.

6.4. Scope Limitation. Confidential Information (other than Personal Data), does not include information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, (ii) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party who is not bound by a confidentiality agreement with the Disclosing Party, (iii) was known to the Receiving Party or in its possession prior to the date of disclosure by the Disclosing Party as evidenced by written records or other reasonable proof, (iv) is furnished by the Disclosing Party to the Receiving Party with written permission to disclose, or (v) is independently developed by the Receiving Party without reference to or use of Confidential Information as evidenced by written records or other reasonable proof.

## **7. PROPRIETARY RIGHTS**

7.1. Trustwell Ownership. As between the Parties, all right, title and interest, including all IPR in the Services and any components thereof and in any Statistical Information are and shall remain the sole and exclusive property of Trustwell.

7.2. Trustwell Content. The Trustwell Content that is underlying certain of the Services consists of factual, regulatory and other information gathered, selected, analyzed, and arranged by Trustwell or its sources at Trustwell or such sources considerable expense including by the application of methods of selection and judgement unique and original to Trustwell or its sources. As between the Parties, all right, title and interest including the IPR in Trustwell Content is and shall remain the sole and exclusive property of Trustwell. For the avoidance of doubt, the public availability of Trustwell Content or portions thereof, shall not in any manner, reduce or limit Trustwell's proprietary rights in Trustwell Content or Client's confidentiality obligations with respect thereto, and the use of Trustwell Content shall be strictly subject to the scope of licenses granted to Client hereunder and any restrictions set forth herein. Client, its Affiliates and Authorized Users shall refrain from disclosing, using or relying on any Trustwell Content and any related Output and Deliverables, to develop competitive products or services.

7.3. Client Data and Materials. As between the Parties, all right, title and interest, including all IPR in Client Data and Client Materials, are and shall remain the sole and exclusive property of Client. Client grants to Trustwell a limited, non-exclusive, non-transferable, non-sublicensable right and license, during the Term to use such Client Data and Client Materials in order to deliver the Services. CLIENT HAS SOLE RESPONSIBILITY AND TRUSTWELL EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, AND APPROPRIATENESS OF CLIENT DATA AND CLIENT MATERIALS. Trustwell may rely on Client Materials in the performance of the Services without independent investigation or verification of their accuracy and completeness. Client has obtained and will continue to obtain all rights, licenses and permissions necessary

for Trustwell to use the Client Data and Client Materials in the provision of Services as contemplated hereunder, including to transmit Client Data to and share it with third parties per Client's instructions.

#### 7.4. Output and Consulting Deliverables.

7.4.1. As between the Parties all right, title and interest, including all IPR in the Output is the sole and exclusive property of Client (save for the underlying Trustwell Content). To the extent Trustwell Content is incorporated into the Output, Trustwell hereby grants to Client a non-exclusive, royalty free, perpetual worldwide right and license to use such Trustwell Content as incorporated in the Output for its business purposes in the normal course of business, but always as part of the Output and not on a standalone basis.

7.4.2. As between the Parties, all right, title and interest, including all IPR in the Consulting Deliverables is the sole and exclusive property of Client, subject to any restrictions below and excluding Trustwell IPR or any repeatable processes and reusable tools, materials and templates that exist independently of the performance of the Services by Trustwell and which are not developed specifically for Client pursuant to an SOW ("**Trustwell Materials**"). Client shall use the Consulting Deliverables strictly for Client's internal business purposes in the normal course of business and shall refrain from distribution or other uses thereof unless expressly permitted in an Order Form or SOW and if applicable, subject to specific requirements set forth therein (e.g. attribution). To the extent Trustwell Materials are incorporated into any Consulting Deliverables, Trustwell hereby grants to Client a non-exclusive, royalty free, perpetual, worldwide right and license to use such Trustwell Materials as incorporated in the Consulting Deliverables for its internal business purposes in the normal course of business, but always as part of the Consulting Deliverables and not on a standalone basis. For the avoidance of doubt, said title and ownership rights shall pass to Client upon payment in full of the Fees (other than amounts which remain the subject of a reasonable, timely dispute).

7.5. Statistical Information. Trustwell may derive and compile, either manually or automatically, Statistical Information and use it for its business purposes, including for operations management, support, training, testing, improvement, research and development and sharing with its Subcontractors, and other relevant parties for similar purposes. "Statistical Information" means analytics, statistical and other information contained in or derived from Client Data or other data related to, stored or used in connection with the Services by Client or Authorized users which data is anonymized and aggregated with other data captured in the Services and Services pertaining the performance, operation and use of the Service.

7.6. Feedback. Trustwell welcomes ideas, suggestions and feedback related to the Services and any other aspects of Trustwell business ("**Feedback**"). Provision of Feedback is entirely voluntary. If Client elects to provide such Feedback, it shall and does hereby assign to Trustwell all title and interest, including IPR in such Feedback and Trustwell may use it for its business purposes in its discretion and its own risk without any payment or accounting to Client, but without any responsibility or liability by Client, provided that Client shall not knowingly provide to Trustwell Feedback that: (i) is in breach of Client's confidentiality obligations to third parties or (ii) infringes third party IPR, or (iii) is in violation of Applicable Laws. Such Feedback is deemed part of Trustwell's Confidential Information and IPR. For the avoidance of doubt, nothing in this Section 7.6 grants any ownership rights to Trustwell in any of Client's products, services or business.

7.7. Reservation of Rights. All rights not expressly granted to Client herein are reserved by Trustwell. There are no implied licenses to Trustwell products or services, including the Services or other IPR of Trustwell.

### 8. **PROTECTION OF CLIENT DATA**

8.1. Security Safeguards. Trustwell will maintain the following minimum security safeguards, as further detailed in the ISA: (i) appropriate technical, physical, administrative and organizational controls designed to maintain the confidentiality, security and integrity of Client's Confidential Information, including Client Data, (ii) systems and procedures for detecting, preventing and responding to attacks, intrusions, and system failures, and regular testing and monitoring of the effectiveness of such systems and procedures, including, without limitation, through vulnerability scans and penetration testing, (iii) a team of employees dedicated to implementation and maintenance of security controls, and (iv) annual assessment of risks that could result in unauthorized disclosure, misuse, alteration, destruction or other compromise of Client's Confidential Information, including Client Data, and of the sufficiency of systems and procedures in place to mitigate those risks. On request, Trustwell will provide to Client its SOC 2 type 2 independent audit summary report, which shall be considered responsive to Client requests for Trustwell security information.

8.2. Personal Data. Trustwell's privacy notice, is posted on [www.Trustwell.com/privacy-policy](http://www.Trustwell.com/privacy-policy), as updated from time to time, and describes the types of Personal Data that is collected under this Agreement, the processing activities involved, data protection features, and retention, return and disclosure of Personal Data. Trustwell shall protect Personal Data in accordance with the DPA except as otherwise agreed by the Parties in writing.

8.3. Monitoring. While Trustwell is under no obligation to do so, it may, in its sole discretion, and without further notice, monitor, and investigate access to and use of the Services. Trustwell may block or suspend Client or Authorized Users' use of the Services without liability: (i) if there is a significant threat to the functionality, security, integrity, or availability of the Services, (ii) if Trustwell reasonably believes that the Services are being used in violation of this Agreement, Trustwell's copyright policy or Applicable Law, (iii) if requested by a law enforcement or government agency or otherwise to comply with Applicable Law, or (iv) to protect the rights, property and safety of Trustwell, Client, Authorized Users and the public, or as otherwise specified in this

Agreement. To verify Client's compliance with this Agreement, Client shall cooperate with and provide such applicable information as is reasonably requested by Trustwell from time to time.

## 9. THIRD PARTY PROVIDERS

9.1. Sourcing by Trustwell. Certain features or functionality of the SaaS Applications or components thereof may be sourced by Trustwell from third parties ("**Trustwell Providers**") or may require the utilization of or integration with products, services or data of Trustwell Providers ("**Trustwell Provider Offering**"). A Trustwell Provider Offering may be provided by Trustwell to Client under the terms herein or directly by a Trustwell Providers to Client. If noted in the Order Form, Client may be required to enter into a direct agreement with the applicable Trustwell Provider with respect to the Trustwell Provider Offering. The terms of such direct agreement do not amend the terms herein. Unless otherwise indicated in the Order Form, Client is responsible for its use of the Trustwell Provider Offering and all associated fees and charges. Trustwell Providers expressly disclaim all implied warranties of merchantability or fitness for a particular purpose of the Trustwell Provider Offering. Trustwell Providers do not warrant that the provision of the Trustwell Provider Offerings will be uninterrupted, error free, timely, complete or accurate, nor do they make any implied or express warranties as to results obtained from their use, any decisions made or actions taken in reliance thereupon or as to the performance thereof. If a Trustwell Provider ceases to make a Trustwell Provider Offering available to Trustwell or requires Trustwell to suspend or terminate the provision of all or any part of the Trustwell Provider Offering, or if Trustwell ceases to source or integrate with a Trustwell Provider Offering, then Trustwell may suspend or terminate provision of such Trustwell Provider Offering without any obligation or liability of Trustwell to Client.

9.2. Sourcing by Client. Any sourcing and usage by Client of non-Trustwell products, features or functionality ("**Non-Trustwell Applications**") that interoperate with the SaaS Applications or exchange data between Client and any non-Trustwell provider ("**Non-Trustwell Provider**"), is solely between Client and the applicable Non-Trustwell Provider. Trustwell does not warrant or support Non-Trustwell Applications. Trustwell disclaims all responsibility and liability for Client's integration of Non-Trustwell Applications. If Client installs or enables a Non-Trustwell Application for use with the SaaS Applications, Client grants Trustwell permission to allow the applicable Non-Trustwell Provider to access Client Data as required for the interoperation of such Non-Trustwell Application with the SaaS Applications. Trustwell disclaims all responsibility and liability for any access, disclosure, modification or deletion of Client Data resulting from any such access by a Non-Trustwell Application.

9.3. Third Party Links and Resources. The SaaS Applications may include links to third-party websites. Trustwell is not responsible and shall not be liable for the content, products, or services available from those resources or websites.

## 10. REPRESENTATIONS, WARRANTIES & DISCLAIMERS

10.1. Mutual. Each Party represents and warrants as to itself that: (i) it has and will continue to have the authority and all necessary rights, licenses, consents, permissions, and approvals to enter into, to grant the rights and perform the duties and obligations described in this Agreement, (ii) the performance of its obligations hereunder does not conflict with any other agreement either signed or contemplated, and (iii) the performance of its obligations hereunder shall be in compliance with Applicable Laws.

10.2. Limited Warranties. Trustwell represents and warrants to Client that: (i) the SaaS Applications and Support will materially perform the functions described in the Documentation, and the functionality and security controls will not materially decrease during any paid Term provided that this warranty shall not apply if Client is in material breach of this Agreement or otherwise uses the SaaS Applications in a manner not authorized hereunder, and (ii) it will perform the Professional Services, where applicable, in a good, workmanlike and professional manner. In the event of any failure of these warranties, Trustwell will, at Trustwell's sole option, and as Client's sole and exclusive remedy, either repair the applicable Service within a reasonable period following Client's notice to Trustwell specifying the breach, or if such repair cannot be completed within such period, terminate the applicable Order Form or SOW or portion thereof and refund to Client a pro-rata amount of Fees paid for the period during which the SaaS Applications were rendered unusable or Professional Services not delivered.

10.3. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10: (i) TRUSTWELL AND ITS AFFILIATES AND PROVIDERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES AND TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, SPECIFICALLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE (WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED), WARRANTIES OF TITLE AND NON-INFRINGEMENT, ANY IMPLIED INDEMNIFICATION OBLIGATIONS, OR OTHER WARRANTIES THAT ARISE FROM TRADE USAGE OR CUSTOM, WITH RESPECT TO ANY ASPECT OF THE SERVICES AND ANY COMPONENTS THEREOF OR THEIR USE OR THE OUTPUT OR RESULTS OBTAINED FROM SUCH USE, ANY DECISIONS MADE OR ACTIONS TAKEN IN RELIANCE THEREUPON OR AS TO THE PERFORMANCE THEREOF (WHETHER PERFORMED IN WHOLE, PART OR NOT AT ALL), (ii) TRUSTWELL AND ITS AFFILIATES AND PROVIDERS DO NOT GUARANTEE THE ADEQUACY, ACCURACY, TIMELINESS OR COMPLETENESS OF THE SERVICES OR ANY COMPONENTS OR OUTPUT THEREOF OR THAT THEY WILL BE ERROR FREE OR FREE FROM MALWARE OR OTHER INFIRMITY OR CORRUPTION AND THEREFORE, NONE OF THEM SHALL BE SUBJECT TO ANY DAMAGES OR LIABILITY FOR ANY ERRORS, OMISSIONS OR DELAYS THEREIN, AND (iii) THE SERVICES AND ALL COMPONENTS THEREOF ARE PROVIDED ON AN "AS IS" BASIS AND CLIENT'S USE THEREOF IS AT CLIENT'S OWN RISK.

## 11. INDEMNIFICATION

11.1. By Trustwell. Trustwell shall, at its sole cost and expense, indemnify, defend and hold harmless Client, its Affiliates and its and their respective officers, directors, employees, counsel, consultants and agents (“**Indemnitees**”) from and against damages, costs and expenses (including reasonable legal fees and expenses) finally awarded against Client Indemnitees, that were incurred or suffered by any of them as a result of third party claims, actions or demands (“**Claims**”), arising out of or in connection with infringement or misappropriation of IPR resulting from the authorized use of the Service.

11.2. By Client. Client shall, at its sole cost and expense, indemnify, defend and hold harmless the Trustwell Indemnitees from and against damages, costs and expenses, (including reasonable legal fees and expenses) finally awarded against Trustwell Indemnitees, that were incurred or suffered by them as a result of third party Claims arising out of or in connection with (i) the unauthorized use of the Services including infringement or misappropriation of IPR, (ii) Client Data, or (iii) Client’s business including Client’s utilization and implementation of the Services including Output and Consulting Deliverables.

11.3. Process. The indemnified Party shall provide the indemnifying Party with prompt written notice and copies of relevant documentation regarding any claim or action for which indemnification may be sought. Failure by the indemnified Party to give such notice to the indemnifying Party shall not relieve the indemnifying Party of its indemnification obligation under this Agreement except to the extent that such failure materially disadvantages the indemnifying Party. If the indemnifying Party fails to appoint an attorney within ten (10) business days after it has been notified in writing of any such claim or action, the indemnified Party will have the right to select and appoint an attorney and the reasonable cost and expense thereof will be paid by the indemnifying Party. The indemnifying Party shall control the defense of any such claim, provided however that it shall not settle, compromise or consent to the entry of any judgment, unless such settlement, compromise or consent includes an unconditional release of the relevant indemnitees from all liability arising out of such claim or action, and is solely monetary in nature and does not include a statement as to, or an admission of culpability or failure to act by or on behalf of, the relevant indemnitees or otherwise adversely affect any of them. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense thereof at the indemnifying Party’s expense.

11.4. Additional Actions by Trustwell. Without limiting either Party’s indemnification obligations, if the Services are enjoined for any reason or if Trustwell believes they may be enjoined then Trustwell shall have the right, at its own expense and in its sole discretion, to: (i) procure for the Client the right to continue using the applicable Services, (ii) to modify the Services as applicable, or any parts thereof or re-direct the manner in which they are used such that they become non-infringing, or (iii) to replace the Services or any parts thereof, as applicable with non-infringing materials, or if none of the foregoing is commercially reasonable, terminate this Agreement and refund on a pro-rata basis the Fees paid by Client for the period such Services were not available or usable.

11.5. Exceptions. Trustwell’s indemnification obligations under this Section 11 do not apply if (i) the Service isn’t specified as the basis of the Claim, and (ii) a Claim arises from the unauthorized use of the Services or from the use or combination of the Services or any part thereof with software, hardware, content, data or any other component or processes not provided by Trustwell, including a Client API or a Non-Trustwell Application or from use that is unauthorized hereunder, if the Services or use thereof would not infringe without such combination or unauthorized use.

11.6. Exclusive Remedy. This Section 11 states the indemnifying Party’s sole liability to, and the indemnified Party’s exclusive remedy hereunder for any third party IPR Claims.

## **12. LIMITS ON LIABILITY**

12.1. Damages Waiver. EXCEPT FOR UNCAPPED CLAIMS, IN NO EVENT SHALL TRUSTWELL, ITS AFFILIATES OR PROVIDERS BE LIABLE HEREUNDER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, LOST TIME, LOST DATA OR LOST GOOD WILL, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

12.2. Cap. EXCEPT FOR UNCAPPED CLAIMS IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF TRUSTWELL OR ITS AFFILIATES FOR ANY AND ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED, IN THE AGGREGATE, THE FEES PAID OR PAYABLE BY CLIENT TO TRUSTWELL UNDER THE APPLICABLE ORDER FORM OR SOW THAT GAVE RISE TO THE CLAIM, DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

12.3. Uncapped Claims. The limitations set out in Sections 12.1 and 12.2 shall not apply to Uncapped Claims. “**Uncapped Claims**” means claims (i) that cannot be limited as a matter of Applicable Law or (ii) resulting from infringement or misappropriation of IPR or from the IPR indemnification obligation in Section 11.

12.4. Conditions. The exclusions and limits in this Section 12 reflect the Parties’ allocation of risk and will apply under any legal theory (including, without limitation, contract or tort), even where a Party was aware of the possibility of such damages, the damages were foreseeable, or any remedies hereunder fail of their essential purpose.

## **13. TERM AND TERMINATION**

13.1. Agreement Term. This Agreement commences as of the date hereof and shall continue in effect so long as an Order Form or SOW is in effect (the “Term”).

13.2. **Termination for Material Breach.** Either Party may terminate this Agreement immediately upon written notice if the other Party commits a material breach and (if capable of remedy) fails to remedy the material breach within thirty (30)-days of being notified to do so by the non-breaching Party.

13.3. **Outstanding Fees.** The termination or expiration of this Agreement shall not relieve Client from any payment obligations with respect to Fees accrued during the Term, whether or not Client was billed for such Fees during the Term or thereafter, unless Client terminates this Agreement or applicable Order Form or SOW in accordance with Section 13.2 in which case, Client shall be entitled to a prorated refund of any pre-paid Fees for the remainder of the applicable Order Form term.

13.4. **Effect of Termination/Expiration.** Upon termination or expiration of this Agreement, Client shall, unless otherwise instructed by Trustwell, immediately terminate all access to the applicable Services and cease any use thereof. No later than thirty (30) days following termination, if directed by the Disclosing Party, the Receiving Party shall destroy all Confidential Information, and upon request certify, in writing, the accomplishment of the obligations set forth in this Section 13.4. Notwithstanding the foregoing, to the extent Trustwell must retain Confidential Information to comply with regulatory record keeping requirements or where applicable, Trustwell needs to retain Confidential Information to ascertain the completion of certain services post-termination or expiration, Trustwell may retain such information for the required duration, provided that it shall apply the same protections set forth herein. For the avoidance of doubt Trustwell is not required to return or destroy Statistical Information which is Trustwell IPR and Confidential Information.

14. **PUBLICITY.** Neither Party may issue any press release regarding this Agreement without the other Party's prior written consent.

15. **FORCE MAJEURE.** Any delays in or failure of performance by Trustwell shall not be considered a breach of this Agreement if such delay or failure is caused by acts of God, unforeseeable circumstances, acts (including a delay or failure to act) of any governmental authority (de jure or de facto), embargoes, strikes, labor disputes, riots, fire, floods, earthquakes, wars (declared or undeclared) or other military action, terrorism, sabotage, epidemics, pandemics, state of emergency, lockdowns, travel bans, or other causes beyond Trustwell's reasonable control.

## 16. MISCELLANEOUS

16.1. **Assignment.** Client may not assign, novate or otherwise transfer this Agreement nor any rights granted hereunder whether voluntarily or by operation of law or through change of control, including by way of sale of stock, assets, merger or consolidation or otherwise (collectively "Assignment") without the prior written consent of Trustwell, which consent shall not be unreasonably withheld. Any assignment contrary to the foregoing shall be null and void and of no legal effect. Subject to the foregoing, this Agreement shall be binding upon the Parties and their respective legal successors and permitted assigns.

16.2. **Independent Contractor.** Trustwell and Client are independent contractors with respect to each other and nothing herein creates an association, a joint venture, partnership or other agency relationship between them.

16.3. **Equitable Relief.** In the event of a breach or threatened breach of this Agreement pertaining to proprietary rights or confidentiality obligations, the injured Party may have no adequate monetary remedy and, accordingly, may seek an injunction or other equitable remedy against such breach. Nothing herein shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of a provision of this Agreement.

16.4. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof, and supersedes all prior and contemporaneous discussions, proposals and agreements between them relating thereto. In the event of any inconsistency among the following documents, the order of precedence shall be: (i) Order Forms or SOW, (ii) these Terms and Conditions and (iii) the Documentation. In the event of any inconsistency between the terms of the DPA and this Agreement, Order Forms, SOW or Documentation, the terms of the DPA shall prevail with respect to any matter concerning compliance with Applicable Data Protection Laws. Trustwell rejects any term or condition in any Client-form purchasing document (excluding Order Forms). For the avoidance of doubt, Linked Documents are deemed part of this Agreement. During the Term Trustwell will not materially reduce the performance, functionality and other protections that exist in such Linked Documents as of the effective date.

16.5. **Amendment.** This Agreement may only be modified or amended in a writing, which makes an express reference to this Agreement and is signed by a duly authorized representative of each Party. No other act, communication, representation, document, usage custom or practice shall be deemed to modify or amend this Agreement.

16.6. **Construction.** The word 'including' shall be deemed to mean 'including but not limited to' unless expressly set forth to the contrary. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the Order Form, SOW, Linked Documents, and any and all attachments and appendices hereto, as the same may be amended or supplemented, and not to any subdivision contained in this Agreement unless expressly stated to the contrary. Neutral pronouns and any variations thereof shall be deemed to include the feminine and masculine and all terms used in the singular shall be deemed to include the plural, and vice versa, as the context may require. Terms denoting persons shall include legal entities and vice versa. Terms having well-known technical or trade meaning (e.g., "terms of art") shall be used in accordance with such recognized meanings. When used in the context of a series of items the word "or" will be construed such that the series



may include any of the items, all of the items, or any combination of the items. Where any provision in this Agreement refers to an action to be taken by a Party, or which such Party is prohibited from taking, such provision shall be applicable whether the action in question is taken directly or indirectly by such Party.

16.7. No Waiver. No failure or delay on the part of neither Party in the exercise of any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

16.8. Severability. In the event that any court having competent jurisdiction over the interpretation of this Agreement shall finally determine that one or more of the provisions contained in this Agreement is unenforceable in any respect, then such provision shall be deemed limited and restricted to the extent that such court deems it to be enforceable, and, as so limited or restricted, shall remain in full force and effect. In the event that any such provision or provisions shall be deemed wholly unenforceable, such provision shall be deleted from this Agreement, and the remaining provisions shall remain in full force and effect.

16.9. Notices. Notices shall be considered given on the date of receipt, if delivered by hand or, overnight courier or, if sent by electronic means, upon receipt of confirmation or a reply which includes the original message, and six (6) days after the date of mailing, if mailed postage paid. Notices shall be given to each Party at its address and marked to the attention of the person set forth below. A Party may change any such address by delivery of written notice to the other Party.

16.10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies. In no event, shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. Further, UCITA whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified shall not apply to this Agreement and is hereby disclaimed. In connection with any claims or disputes between the Parties arising out of or relating to this Agreement, each Party consents to the exclusive jurisdiction and venue in Delaware.

16.11. Non-Solicitation. During the Term and for twelve (12) months following its termination or expiration, Client shall not engage any person who was involved on behalf of Trustwell in the performance of the Services or otherwise had substantial contact with Client during the performance of Services or in connection therewith. Failure to honor this provision by Client would result in Trustwell's suffering irreparable harm, and Client agrees to pay Trustwell, upon written request, a commission equal to six (6) months' base salary of the solicited individual. The foregoing shall not preclude instances of Client communicating open positions to a general job-seeking audience, such as descriptions of open requisitions on a job board or on Client's website, or the hiring of an employee of Trustwell who responds to such general solicitation.

16.12. Survival. The provisions of this Agreement that by their nature extend beyond the termination of this Agreement, will survive the termination of this Agreement, including but not limited to the following Sections: 1, 3.1, 3.3, 6, 7, 9.2, 10.3, 11, 12, 13.3, 13.4, 14 and 16.

16.13. No Presumptions. In construing the terms of this Agreement, no presumption shall operate in either Party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

16.14. Headings. Section headings in this Agreement are for convenience only and shall not affect the interpretation of any provision of this Agreement.

16.15. Counterparts. This Agreement (including any Order Form or SOW) may be executed and delivered by electronic signature, facsimile or email in any number of counterparts, each of which shall be an original, but all of which together (including reproductions by photocopy or scan) shall constitute one instrument and be deemed delivery of an original.

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