



Subscription Terms and Conditions

1. GRANT OF RIGHTS; RESTRICTIONS; CUSTOMER DATA

1.1 Obsidian Platform. Subject to the terms and conditions of these Subscription Terms and Conditions (“Subscription Terms”) and the quotation, order form or other document signed by both parties into which the Subscription Terms are incorporated by reference (the “Quotation”, together with the Subscription Terms, the “Agreement”):

(a) Access Grant. Obsidian will make available to Customer and Obsidian Platform Users (as defined below) via the internet Obsidian’s software-as-a-service platform, whereby Obsidian analyzes certain data provided by Customer and its end users and provides such Customer with cybersecurity-related reports and notifications based on Obsidian’s analysis of such data (the “Platform”). Obsidian hereby grants Customer a nonexclusive, nontransferable, non-sublicensable right to access and use the Platform through any web-based application or interface made available to Customer by Obsidian solely for Customer’s internal business purposes.

(b) Obsidian Platform Users. The Platform will be accessed or used only by the employees or contractors of Customer who are authorized to access the Platform using a user identifier and password provided to Customer by Obsidian or setup by Customer (“Obsidian Platform Users”). Customer will not make available the Platform to any person or entity other than Obsidian Platform Users. Customer will be responsible for the Obsidian Platform Users’ compliance with this Agreement.

(c) Monitored Users Limits. Customer’s access and use of the Platform is subject to the monitored user limits set forth on the Quotation. Obsidian reserves the right to prevent or limit usage of the Platform in excess of such limits.

1.2 Obsidian Software. Subject to the terms and conditions of the Agreement Obsidian hereby grants Customer a nonexclusive, nontransferable, non-sublicensable right and license to (i) download and install the related software applications used to facilitate access and use of the Platform and to perform system monitoring, in object code format only (the “Software”, and together with the Platform, the “Obsidian Technology”) on Customer’s (including its employees’ and contractors’) systems and (ii) to use the Obsidian Software to access and use the Platform as permitted by this Agreement.

1.3 Restrictions.

(a) Customer will not, and will not, directly or indirectly, permit any third party (including without limitation Obsidian Platform Users and Customer’s employees and contractors) to: (i) interfere with or disrupt the integrity or performance of the Obsidian Technology; (ii) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to any of the Obsidian Technology or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing; (iii) remove or obscure any proprietary notices or labels of Obsidian; or (iv) otherwise access or use the Obsidian Technology in a manner inconsistent with this Agreement or applicable law.

(b) Furthermore, Customer will not, and will not, directly or indirectly, permit any third party (including without limitation Obsidian Platform Users and Customer’s employees and contractors) to: (i) copy, modify, duplicate, reproduce, translate, or

otherwise create derivative works based on the Obsidian Technology; (ii) reverse engineer, decompile, disassemble, re-program, or analyze the Obsidian Technology (in whole or in part) or otherwise attempt to reconstruct, identify or discover the source code, object code or underlying structure, ideas or algorithms of the Obsidian Technology (except to the extent such restriction is prohibited by law); (iii) use the Obsidian Technology or any information contained therein or otherwise provided by Obsidian or its licensors for the purposes of developing, or having developed, any products or services competitive with the Obsidian Technology; or (iv) market, sublicense, distribute, resell, lease, loan, transfer or otherwise commercially exploit or make the Obsidian Technology available (in whole or part) to any third party, except to a third party that manages Customer’s computing environment, grant non-Obsidian Platform Users access to the Platform or use the Obsidian Technology to provide a hosted or managed service to others.

2. OWNERSHIP; RESERVATION OF RIGHTS

2.1 Reservation of Rights. Subject only to the rights expressly granted to Customer under this Agreement, as between Obsidian and Customer all rights, title and interest in and to the Obsidian Technology and all reports, information, content and materials shared with Customer in connection therewith (“Obsidian Content”) will remain with and belong exclusively to Obsidian. The Obsidian Technology and all information related thereto (including Obsidian Content) is Obsidian’s proprietary information, and Customer will not disclose or make available such information to any third party or otherwise use or exploit such information for its benefit or the benefit of any third party.

2.2 Feedback. Customer may elect from time to time to provide suggestions or comments regarding enhancements or functionality or other feedback (“Feedback”) to Obsidian with respect to the Obsidian Technology. Obsidian will have full discretion to determine whether to proceed with the development of the requested enhancements, new features or functionality. Customer hereby grants Obsidian a royalty-free, fully paid up, worldwide, transferable, sublicensable (directly and indirectly), perpetual, irrevocable license to (a) copy, distribute, transmit, display, perform, and modify and create derivative works of the Feedback, in whole or in part; and (b) use the Feedback and/or any subject matter thereof, in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which incorporate, practice or embody, or are configured for use in practicing, the Feedback, in whole or in part.

2.3 Customer Data.

(a) Customer Responsibilities. Customer will be solely responsible for the data collected from Customer and/or otherwise provided by Customer to Obsidian to enable the provision of the Platform to, and operation of the Obsidian Technology by, Customer or otherwise to perform the Services (as defined below) (collectively, “Customer Data”). Customer represents and warrants that it has secured all necessary rights, consents and permissions to use Customer Data with the Obsidian Technology and grant Obsidian the rights to Customer Data specified in these Subscription Terms without violating third-party intellectual property, privacy or other rights. As between the Parties, Customer will retain all right, title and interest in and to the Customer Data and is responsible for the content and accuracy of the Customer Data.

(b) Obsidian Usage. Customer hereby grants to Obsidian a non-exclusive, worldwide, royalty-free, fully paid-up, non-sublicensable (except to Obsidian's contractors and service providers), right and license to use the Customer Data solely to perform Obsidian's obligations under this Agreement. Customer hereby grants Obsidian permission to provision and operate a service account that has access to the Customer Data and Platform environment and deploy web session monitoring and analytics software to monitor Customer's activity on the Platform.

(c) Data Protection. Each party will comply with the Data Processing Addendum (the "DPA") available at <https://start.obsidiansecurity.com/rs/124-DIV-269/images/%5BDPA%5D%5B07.14.23%5D%20Obsidian-DPA-Processor-2022-07-11.pdf>, and Obsidian will process Customer Personal Data (as defined in the DPA) in accordance with the DPA.

(d) Anonymous and Aggregate Data. Customer understands and agrees that the Obsidian Platform uses Customer Data, in whole or in part, for the purpose of deriving anonymous statistical and usage data, and data related to the functionality of Obsidian's products and services, provided such data cannot be used to identify Customer or its users ("Anonymous Data") and combining or incorporating such Anonymous Data with or into other similar data and information available, derived or obtained from other customers, licensees, users, or other sources (when so combined or incorporated, referred to as "Aggregate Data"), for improving Obsidian's existing products and services, and developing new Obsidian products and services. For the avoidance of doubt, Anonymous Data and Aggregate Data do not constitute Customer Data.

3. RESPONSIBILITIES

3.1 Customer Responsibilities. Customer will (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Obsidian Technology and notify Obsidian promptly of any such unauthorized access or use, and (b) use the Obsidian Technology only in accordance with Obsidian's standard technical guides, policies, and documentation for the Obsidian Technology that are made available through the Platform on the dedicated documentation and customer support pages (the "Documentation"), applicable laws and regulations and the terms of this Agreement.

3.2 Obsidian Responsibilities. Obsidian will use commercially reasonable efforts to provide the Platform in a manner that minimizes errors and interruptions in accessing the Platform, as set forth in the Service Level Agreement attached hereto as Exhibit A. Obsidian will provide technical support to Obsidian Platform Users for issues and questions arising from the operation of the Obsidian Technology, as set forth in Exhibit A. Obsidian will implement and maintain reasonable administrative, physical and technical safeguards which attempt to prevent any collection, use or disclosure of, or access to Customer Data that this Agreement does not expressly authorize.

3.3 Services. From time to time, Obsidian may agree to provide implementation, activation technical support, consulting and other services described in the applicable Quotation (the "Services"). Each such Quotation will specify those Services that are to be performed by Obsidian hereunder. Obsidian's performance of the Services is dependent in part on Customer's actions. Accordingly, Customer will use reasonable efforts to provide Obsidian with the necessary items and assistance necessary for Obsidian to complete the Services. Any dates or times relevant to performance by Obsidian hereunder will be appropriately and equitably extended to account for any delays or change in assumptions due to Customer.

4. FEES

4.1 Fees; Payment Terms. Customer will pay to Obsidian the total fee as set forth on the Quotation, in accordance with the payment schedule set forth on the Quotation. All fees paid are non-refundable. If payment of any fees (including any reimbursement of expenses) is not made when due and payable, a late fee will accrue at the rate of the lesser of one and one-half percent (1.5%) per month or the highest legal rate permitted by law and Customer will pay all reasonable expenses of collection. In addition, if any past due payment has not been received by Obsidian within thirty (30) days from the time such payment is due, Obsidian may suspend access to the Obsidian Technology until such payment is made. At its discretion, Obsidian may increase the pricing stated on the Quotation for any Renewal Term (as defined below) upon giving Customer at least ninety (90) days' notice (which may be sent by email) prior to the end of the then-current term.

4.2 Net of Taxes. All amounts payable by Customer to Obsidian hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "Taxes"). Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of Obsidian. Customer will not withhold any Taxes from any amounts due to Obsidian. Any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Customer on the Quotation.

5. TERM, TERMINATION

5.1 Term. This Agreement will commence on the Start Date and will continue through the Initial Term set forth on the Quotation, unless earlier terminated as set forth herein. Thereafter, this Agreement will automatically renew for additional one (1) year periods (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either party provides the other with written notice of non-renewal at least sixty (60) days prior to the end of the then current term.

5.2 Termination. Either Party may terminate this Agreement (a) in the event of a breach of this Agreement by the other Party that is not cured within thirty (30) days (or ten (10) days in the event of non-payment) after the breaching party receives written notice of such breach or (b) upon the commencement of any bankruptcy proceeding (or other insolvency proceeding) of the other Party or the dissolution of the other Party. In addition, Obsidian may terminate this Agreement immediately in the case of a breach by Customer of Section 1.3 (Restrictions). In no event will any termination or expiration relieve Customer of the obligation to pay any expenses and fees payable to Obsidian for the period prior to the effective date of termination or expiration. Neither Party will incur any liability whatsoever for any damage, loss or expenses of any kind suffered or incurred by the other (or for any compensation to the other) arising from or incident to any termination by such Party (or expiration) that complies with the terms of the Agreement whether or not such Party is aware of any such damage, loss or expenses.

5.3 Effect of Expiration or Termination. Except as expressly stated herein, upon expiration or termination of the Agreement, (a) all rights granted hereunder and all obligations of Obsidian to provide the Obsidian Technology or the Services will immediately terminate; (b) Customer will immediately cease use of the Obsidian Technology and uninstall all copies of the Software from its (including its Obsidian Platform Users', employees' and contractors') systems; and (c) each Party will promptly return or destroy all copies or other embodiments of the other Party's Confidential Information, subject to Obsidian's rights in Section 2.3(d) (Anonymous and Aggregate Data). Upon Customer's written

request within seven (7) days after such expiration or termination, Obsidian will make available to Customer an export of Customer Data in Obsidian's systems in a format reasonably requested by Customer, subject to Obsidian's rights in Section 2.3(d) Anonymous and Aggregate Data). After the expiration of such seven (7) day period, Obsidian may at its discretion purge Customer Data from its systems.

5.4 Survival. Sections 1.3 (Restrictions), 2.1 (Reservation of Rights), 2.2 (Feedback), 2.3(d) (Anonymous and Aggregate Data), 4 (Fees), 5.3 (Effect of Expiration or Termination), 6 (Confidential Information), 7.4 (Exclusions), 8 (Indemnification), 9 (Limitation of Liability), and 11 (General) will survive the termination or expiration of this Agreement.

6. CONFIDENTIAL INFORMATION

6.1 Definition. The parties anticipate that they will exchange confidential information during the Term. "Confidential Information" means any and all tangible and intangible information, either written, oral, or in any other medium, disclosed or made available by a party ("Disclosing Party") to the other party (the "Receiving Party"), including, without limitation, research and development, patents or trade secrets, financial information, know-how, designs, samples, processes, methodologies, manuals, vendor names, supplier lists, customer lists and other information related to clients, employee lists, databases, sales and marketing information, and computer programs, or any other confidential information or proprietary aspects of the business of the Disclosing Party which (i) Disclosing Party identifies to Receiving Party is "confidential" or "proprietary" or (ii) should be reasonably understood as confidential or proprietary due to its nature and circumstances of disclosure. The Obsidian Technology and the terms and conditions of this Agreement are Obsidian's Confidential Information. The Customer Data is Customer's Confidential Information. Information will not be considered to be Confidential Information to the extent that the Receiving Party can prove by reliable written record that such information: (a) is already known to the Receiving Party free of any restriction at the time it is obtained by the Receiving Party; (b) is subsequently learned from an independent third-party free of any restriction or obligation of confidentiality and without breach of this Agreement; (c) becomes publicly available through no wrongful act of the Receiving Party; (d) is independently developed by the Receiving Party without reference to or use of any Confidential Information of the other Party.

6.2 Obligations. The Receiving Party will not disclose the Disclosing Party's Confidential Information to any third party without Disclosing Party's prior written consent, except pursuant to Section 6.1 (Definition). The Receiving Party will protect all Confidential Information received from the Disclosing Party with the same degree of care used by the Receiving Party to protect its own confidential information of like importance from unauthorized use or disclosure, but in no event less than a reasonable degree of care. The Receiving Party will only use the Disclosing Party's Confidential Information to exercise its rights and perform its obligations under this Agreement. The Receiving Party acknowledges that (a) the provisions contained in this section are reasonable and necessary to protect the legitimate business interests of the Disclosing Party; and (b) its breach of this Section 6 will cause irreparable damage to the Disclosing Party and agrees that the Disclosing Party will be entitled to seek injunctive relief from a court of competent jurisdiction as a result of any breach as well as such further or other equitable relief as may be granted by such court, without the posting of any bond or other security and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Any right, power, or remedy provided under this Agreement to the Disclosing Party will be cumulative and in addition to any other right, power, or remedy provided under this Agreement or existing in law or in equity

(including, without limitation, the remedies of injunctive relief and specific performance).

6.3 Permitted Disclosures. The Receiving Party may disclose the Confidential Information of the Disclosing Party if required to be disclosed by law, regulation, court order or subpoena, provided that the Receiving Party will, to the extent legally permitted, provide reasonable advance notice of the required disclosure to the Disclosing Party in writing prior to disclosure.

7. WARRANTIES AND EXCLUSIONS

7.1 Mutual. Each party represents and warrants to the other party that (a) such party has the required power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both parties.

7.2 By Obsidian. Obsidian warrants to Customer that (a) the Obsidian Technology will substantially conform with the Documentation, and (b) Obsidian will not knowingly include in any Software provided to Customer any computer code designed to intentionally disrupt, disable or damage the operation of a network or computer system or any component thereof. In the event of a breach of the foregoing warranties, Obsidian's sole obligation, and Customer's sole remedy, will be for Obsidian to use commercially reasonable efforts to correct the Obsidian Technology.

7.3 By Customer. Customer represents, warrants, and covenants that (a) Customer has and will have the legal authority and all rights necessary (i) to provide the Customer Data to Obsidian and (ii) for Obsidian to fulfill its obligations and exercise its rights with respect to the Customer Data as set forth in this Agreement and (b) Customer will comply with applicable law. Customer is fully responsible for all liabilities and expenses of any type whatsoever that may arise on account of its activities, or those of its Obsidian Platform Users and its employees and contractors, and Customer will be responsible for and indemnify Obsidian against all claims, damages, settlements, expenses and attorneys fees incurred by Obsidian with respect to any of the foregoing.

7.4 Exclusions. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 7.2 (BY OBSIDIAN), THE OBSIDIAN TECHNOLOGY, OBSIDIAN CONTENT AND SERVICES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. OBSIDIAN DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING ITS EXPRESS OBLIGATIONS IN THE SERVICE LEVEL AGREEMENT AS SET FORTH IN EXHIBIT A, OBSIDIAN DOES NOT WARRANT THE RESULTS TO BE ACHIEVED FROM THE OBSIDIAN TECHNOLOGY OR OBSIDIAN MATERIALS OR THAT THE OBSIDIAN TECHNOLOGY IS ERROR FREE, WILL PERFORM UNINTERRUPTED, OR WILL MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES THAT THE OBSIDIAN CONTENT REFLECT OBSIDIAN'S SUBJECTIVE ANALYSIS, CONCLUSIONS AND ASSESSMENTS, AND CUSTOMER AGREES THAT OBSIDIAN WILL HAVE NO LIABILITY TO CUSTOMER WITH RESPECT TO THE OBSIDIAN CONTENT, INCLUDING ANY STATEMENTS, INFORMATION OR OTHER CONTENT CONTAINED IN THE OBSIDIAN CONTENT. FURTHER, CUSTOMER AGREES THAT OBSIDIAN WILL HAVE NO LIABILITY FOR (A) ANY ACTIONS OR INACTIONS OF CUSTOMER IN RESPONSE TO OR AS A CONSEQUENCE OF

ANY OBSIDIAN CONTENT OR ABSENCE OF OBSIDIAN CONTENT, OR (B) ANY DAMAGES SUFFERED BY CUSTOMER ARISING FROM OR IN CONNECTION WITH ANY CYBERSECURITY BREACH.

8. INDEMNIFICATION

8.1 By Obsidian. Obsidian will defend at its expense any claim, suit or proceeding (each a "Claim") brought against Customer by a third party based upon a claim that Customer's use of the Obsidian Technology as contemplated by this Agreement infringes or misappropriates such third party's United States or European Union intellectual property rights and Obsidian will pay all costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of any such Claim. If the use of the Obsidian Technology by Customer has become, or in Obsidian's opinion is likely to become, the subject of any claim of infringement or misappropriation, Obsidian may, in its sole discretion: (i) procure for Customer the right to continue using the Obsidian Technology; (ii) replace or modify the Obsidian Technology to make it non-infringing; or (iii) terminate this Agreement or the affected Quotation and refund to Customer any pre-paid, unused fees for the terminated portion of the Term. Notwithstanding the foregoing, Obsidian will have no liability or obligation under this Section 8.1 or otherwise with respect to any Claim resulting from: (a) any Customer Data; (b) use of the Obsidian Technology outside the scope of this Agreement; (c) modification of the Obsidian Technology in accordance with Customer's specifications or instructions or by any person or entity other than Obsidian without Obsidian's express consent; (d) the combination, operation or use of the Obsidian Technology with other applications, portions of applications, product(s), data or services not provided by Obsidian; or (e) use of the Obsidian Technology by Customer after Customer has been notified of the potential infringement. This Section 8.1 states Obsidian's entire obligation and Customer's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

8.2 By Customer. Customer will defend at its expense any Claim brought against Obsidian by any third party arising out of or related to the Customer Data or Customer's breach of Section 1.3 (Restrictions) and Customer will pay all costs and damages finally awarded against Obsidian by a court of competent jurisdiction as a result of any such Claim.

8.3 Procedures. The indemnifying party's obligations in this Section 8 (Indemnification) are subject to receiving from the indemnified party: (a) prompt notice of the Claim (but delayed notice will only reduce the indemnifying party's obligations to the extent it is prejudiced by the delay), (b) the exclusive right to control the Claim's investigation, defense and settlement and (c) reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a claim without the indemnified party's prior approval if settlement would require the indemnified party to admit fault or take or refrain from taking any action (except regarding use of the Obsidian Technology when Obsidian is the indemnifying party). The indemnified party may participate in a Claim with its own counsel at its own expense.

9. LIMITATIONS OF LIABILITY

9.1 General Cap. EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO A CLAIM OF LIABILITY.

9.2 Consequential Damages Waiver. NEITHER PARTY WILL HAVE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION,

DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.

9.3 Exceptions.

(a) Uncapped Claims. SECTIONS 9.1 (GENERAL CAP) AND 9.2 (CONSEQUENTIAL DAMAGES WAIVER) WILL NOT APPLY TO (I) THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION); (II) EITHER PARTY'S INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CUSTOMER'S BREACH OF SECTION 1.3 (RESTRICTIONS); (III) ANY BREACH OF SECTION 6 (CONFIDENTIAL INFORMATION), EXCLUDING BREACHES RELATING TO CUSTOMER DATA; OR (IV) LIABILITIES THAT CANNOT BE LIMITED BY LAW OR CUSTOMER'S PAYMENT OBLIGATIONS.

(b) Enhanced Cap. SECTIONS 9.1 (GENERAL CAP) AND 9.2 (CONSEQUENTIAL DAMAGES) WILL NOT APPLY TO EITHER PARTY'S BREACH OF SECTION 2.3(C) (DATA PROTECTION) OR THE DPA. EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR BREACH OF SECTION 2.3(C) (DATA PROTECTION) OR THE DPA WILL BE LIMITED TO THREE TIMES (3X) THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO A CLAIM OF LIABILITY.

9.4 Nature of Claims. The waivers and limitations in this Section 9 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in the Agreement fails of its essential purpose.

10. **TRIALS AND BETAS.** Obsidian may offer optional access to the Platform (or Platform features) on a free, trial, beta, or early access basis ("Trials and Betas"). Use of Trials and Betas is permitted only for Customer's internal evaluation during the period designated on the Quotation (or if not designated in a Quotation or otherwise, thirty (30) days). Either party may terminate Customer's use of Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features never released. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, OBSIDIAN OFFERS NO WARRANTY, INDEMNITY, SERVICE LEVEL AGREEMENT OR SUPPORT FOR TRIALS AND BETAS AND ITS LIABILITY FOR TRIALS AND BETAS WILL NOT EXCEED \$50,000.

11. GENERAL

11.1 Force Majeure. Neither Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree ("Force Majeure Event"); provided that financial inability in and of itself will not be a Force Majeure Event.

11.2 Compliance with Laws. Customer will not transfer, either directly or indirectly, the Obsidian Technology, either in whole or in part, to any destination, entity or person subject to export restrictions under United States law and will otherwise comply with all other applicable import and export laws, rules, restrictions and regulations. Customer represents that Customer is not subject to any export laws, rules, restriction or regulations that

would prohibit Customer from receiving or using the Obsidian Technology.

11.3 Publicity. Neither Party will, without prior written consent of the other Party, issue a press release or other public statements or announcements regarding their business relationship or entry into this Agreement, such consent not to be unreasonably withheld, conditioned or delayed.

11.4 No Assignment. Customer may not assign this Agreement, or sublicense any of the rights granted herein, in whole or in part, without the prior written consent of Obsidian, which consent will not be unreasonably withheld, except Customer may assign this Agreement, without the prior written consent of Obsidian, to a corporation or other business entity succeeding to all or substantially all of the assets and business of Customer by merger or purchase, provided that such corporation or other business entity assumes, in a writing delivered to Obsidian, all of the terms and conditions of this Agreement. Any attempt by Customer to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing will be null and void. Obsidian may freely assign or subcontract any or all of its rights or obligations under this Agreement.

11.5 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representative of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

11.6 Relationship. Nothing in this Agreement will be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties and there are no third-party beneficiaries to the Agreement.

11.7 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the parties as of the Start Date.

11.8 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the State of California without regard to its rules of conflict of laws. Each of the Parties hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the State of California and of the United States of America located in Orange County, California (the "California Courts") for any litigation among the Parties arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the California Courts and agrees not to plead or claim in any California Court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the California Courts.

11.9 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (a) delivered personally; (b) upon delivery when sent by email; (c) three (3) days after having been sent by registered or certified mail, return receipt requested,

postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the signature page of these Subscription Terms, or such other addresses designated pursuant to this Section 11.9.

11.10 Entire Agreement. The Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

11.11 Partner Subscriptions. This Section applies to any Customer access to or use of the Obsidian Technology obtained through an authorized Obsidian channel partner ("Partner").

(a) Commercial Terms. Instead of paying Obsidian directly, Customer will pay applicable amounts to the Partner as agreed between Customer and the Partner. Customer's order details (e.g., scope of use, Subscription Term, and fees) will be as stated in the Quotation placed by Partner with Obsidian on Customer's behalf. Customer's Order will renew with Partner in accordance with Section 5.1 (Term), unless Partner notifies Obsidian that it is opting-out of auto-renewal on Customer's behalf as described in these Subscription Terms or in the manner specified in the agreement between Partner and Obsidian. Partner is responsible for the accuracy of such Quotation. Obsidian may suspend or terminate Customer's rights to use the Obsidian Technology if it does not receive the corresponding payment from the Partner. If Customer is entitled to a refund under this Agreement, Obsidian will refund any applicable fees to the Partner and the Partner will be solely responsible for refunding the appropriate amounts to Customer, unless otherwise specified.

(b) Relationship with Obsidian. This Agreement is directly between Obsidian and Customer and governs all use of the Obsidian Technology by Customer. Partners are not authorized to modify these Subscription Terms or make any promises or commitments on Obsidian's behalf, and Obsidian is not bound by any obligations to Customer other than as set forth in the Agreement. Obsidian is not party to (or responsible under) any separate agreement between Customer and Partner. The amount paid or payable by the Partner to Obsidian for Customer's use of the applicable Service under the Agreement will be deemed the amount paid or payable by Customer to Obsidian under this Agreement for purposes of Section 9 (Limitations of Liability). Obsidian is not responsible for any acts, omissions, products or services provided by Partner.

11.12 U.S. Federal Government End User. Obsidian provides the Obsidian Technology, including related software and technology, for federal government end use as a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Obsidian Technology is provided to the end user with only those rights as provided under the terms and conditions of this Agreement. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Obsidian to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

Each Party has caused this Agreement to be executed by its duly authorized representative as of the Effective Date:

Customer Signature: _____

Obsidian Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Effective Date: _____

Effective Date: _____

Notice Address: _____

Notice Address: 680 Newport Center Dr., Suite 200,
Newport Beach, CA 92660

Notice Email: _____

Notice Email: legal@obsidiansecurity.com

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Exhibit A

Service Level Agreement

Availability Objective

Obsidian will provide 99.9% Availability (as defined below) for the Platform within Obsidian's Immediate Control (as defined below). For purposes hereof, "Availability" or "Available" means the Platform is available for access and use through an Internet connection.

"Immediate Control" includes Obsidian's network services within the Obsidian data center which extends to, includes and terminates at the Internet Service Provider circuit termination point on the router in Obsidian's data center (*i.e.*, public Internet connectivity).

Specifically excluded from the definition of "Immediate Control" are the following:

- (a) equipment, data, materials, software, hardware, services and/or facilities provided by or on behalf of Customer and Customer's network services which allow Customer to access the Platform. These components are controlled by Customer and their performance or failure to perform can impair or disrupt Customer's connections to the Internet and the transmission of data;
- (b) equipment, data, advertisements, materials, software, hardware, services and/or facilities provided by third party vendors or service providers of Customer;
- (c) acts or omissions of Customer, its employees, contractors, agents, representatives, third party vendors or service providers or anyone gaining access to Obsidian's network at the request of Customer;
- (d) issues arising from bugs or other problems in the software, firmware or hardware of third parties;
- (e) delays or failures due to circumstances beyond Obsidian's reasonable control that could not be avoided by its exercise of due care; and
- (f) any outage, network unavailability or downtime outside the Obsidian data center.

Availability Calculation: Availability is based on a weekly 7 day x 24 hour calculation. The calculation will be as follows: $((a - b) / a) \times 100$, where "a" is the total number of hours in a given calendar month, and "b" is the total number of hours that service is not Available in a given month. Specifically excluded from "b" in the calculation of the Availability measurement are (1) a service interruption caused by a security threat until such time as the security threat has been eliminated; (2) reasons of a Force Majeure Event or events which are outside Obsidian's Immediate Control; (3) use of unapproved or modified hardware or software by or on behalf of Customer; (4) issues arising from misuse of the Platform by Customer or its agents, clients, or third party contractors; and/or (5) service interruption caused by Scheduled Maintenance as described below.

Scheduled Maintenance: Obsidian will provide Customer with at least forty-eight (48) hours advance notice, unless otherwise agreed by Customer, via email of all scheduled maintenance activities. Unless otherwise agreed by Customer in advance, Obsidian will perform scheduled maintenance within a maintenance window from Thursday through Sunday between the hours of 9:00 p.m. PDT to 4:00 a.m. PDT.

Monitoring and Reporting. Obsidian will monitor the status and availability of all components associated with the Platform, exercising reasonable care in accordance with industry standards for hosting, and institute prompt corrective actions for all Platform-impacting issues encountered during the delivery of the Platform. In the event of a non-compliance with the Availability objective outlined above, Obsidian will notify Customer within three (3) business days and identify in reasonable detail the non-compliance.

SUPPORT AND PROBLEM MANAGEMENT

Customer Support: Customer support for the Platform can be reached through Customer's relationship manager (or another contact as may be designated from time to time) and is available from 1:00 a.m. PDT to 5:00 p.m. PDT Monday–Friday, excluding federal holidays, for all support requests, and twenty-four (24) hours, seven (7) days per week for Critical Priority requests. Obsidian has structured a response plan to address such requests in an efficient and timely manner, addressing the most critical issues first. Cases will be opened upon receipt of request or identification of issue, and incidents will be routed and addressed according to the following:

Severity Level	Error State Description	Target Response Time	Target Resolution Within
1 – Critical Priority	Renders the Platform inoperative, or causes the Platform to fail catastrophically	4 hours	24 hours
2 – High Priority	Affects the operation the Platform and materially degrades Customer's use thereof	12 hours	48 hours
3 – Medium Priority	Affects the operation of the Platform but does not materially degrade Customer's use thereof	24 hours	7 Days
4 – Low Priority	Causes only a minor impact on the operation of Customer	48 hours	7 Days

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