

TRELLIX/SKYHIGH SECURITY

AWS MARKETPLACE TERMS AND CONDITIONS OF SALE

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING ANY OF THE TRELLIX / SKYHIGH SECURITY OFFERINGS, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE TRELLIX / SKYHIGH SECURITY OFFERINGS. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.

IF YOU ARE USING ANY TRELLIX / SKYHIGH SECURITY OFFERINGS AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP, OR SIMILAR ENTITY, YOU MUST BE AUTHORIZED TO SIGN FOR, AND LEGALLY BIND, SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. ACCORDINGLY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

1. **Introduction.**

- 1.1 This Agreement, together with any Supplemental Terms (see Section 3 below) incorporated herein (collectively, the “**Agreement**”), is a legal agreement between the Company (as defined in each of the Supplemental Terms, or “**We**,” “**Us**,” or “**Our**”) and the end user customer identified in an Online Order processed in AWS Marketplace (“**Customer**,” or “**You**” or “**Your**”). Company and Customer may each be referred to in this Agreement as a “**Party**” or together as the “**Parties**.”
- 1.2 This Agreement shall apply to Customer’s purchase of Our offerings that We make available for purchase through AWS Marketplace.

2. **AWS Marketplace Transactions.**

- 2.1 In order to purchase Our offerings via AWS Marketplace, You must already be an existing AWS Marketplace customer. In the AWS Marketplace tool, You will select Our offerings to purchase through an AWS Marketplace transaction (“**Online Order**”).
- 2.2 Once Your Online Order is processed through AWS Marketplace, Amazon Web Services, Inc. (“**AWS**”) is responsible for collecting and processing payments, credits and refunds applicable to Your Online Order.
- 2.3 You shall pay the applicable fees and associated taxes for the Online Order pursuant to the separate AWS marketplace customer agreement that you have executed with AWS (“**Marketplace Customer Agreement**”). If You fail to pay AWS the applicable fees for Your Online Order per Your Marketplace Customer Agreement, We have the right to invoice You directly, as set forth in the “**Payment**” provisions in the Supplemental Terms.

3. **Supplemental Terms.**

The following Supplemental Terms are incorporated into, and made a part of this Agreement:

- (a) For the purchase and use of any Company’s software licenses and for any related technical support services, the End User License Agreement (**EULA**) in **Appendix A** to this Agreement shall apply, and is publicly available at <https://www.trellix.com/about/legal/end-user-license->

[agreement](#);

- (b) For the purchase and use of any of the Company's cloud services, the Cloud Terms of Service in **Appendix B** to this Agreement shall apply, and are publicly available at <https://www.trellix.com/about/legal/cloud-terms-of-service/>; and
- (c) For the purchase and use of the Company's professional services, the Professional Service Terms in **Appendix C** to this Agreement shall apply, and are publicly available at <https://www.trellix.com/assets/legal/trellix-professional-service-terms-and-conditions.pdf>.

- 4. **Modifications to this Agreement.** From time to time, the Company may modify this Agreement, including the Supplemental Terms incorporated herein. Customer may be required to click to accept the modified Agreement when submitting a new Online Order through AWS Marketplace, and in any event, Customer's continued use of any Company offering purchased through AWS Marketplace after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version.
- 5. **Complete Agreement, Order of Precedence.** This Agreement is the complete agreement regarding the matter contained herein. Notwithstanding the Marketplace Customer Agreement or the Marketplace Supplier Agreement, Customer and Company agree that this Agreement (including the Supplemental Terms) controls with respect to all subject matter covered by the Agreement, and each Supplement shall govern with respect to the subject matter covered by that particular Supplement.

-Appendices A, B and C follow this page-



APPENDIX A

TRELLIX / SKYHIGH SECURITY END USER LICENSE AGREEMENT

This End User License Agreement, together with any Supplement terms (“**Agreement**”), is a legal agreement between the Company (defined below, or “**We**,” “**Us**,” or “**Our**”) and Customer (as identified in the Grant Letter, or “**You**” or “**Your**”). Company and Customer may each be referred to in this Agreement as a “**Party**” or together as the “**Parties**.”

By downloading, installing, copying, accessing, or using the Software, You agree to the terms and conditions of this Agreement. If You do not agree to this Agreement, You must:

- Not download, install, copy, access or use the Software; and
- Promptly return the proof of entitlement of the Software to the Party from whom You acquired the Software.

If the Software was delivered to You embedded in Our Hardware, do not download, install, or use the Software if You do not agree to this Agreement.

Capitalized terms used in this Agreement have the meaning assigned to them as provided in Section 16 below, or as may be defined elsewhere in this Agreement.

1. LICENSE GRANT.

- 1.1 **Right to Use the Software.** Subject to Your compliance with the terms and conditions of this Agreement, and payment of the applicable license fees, We grant You a non-exclusive, non-transferable right to use the Software listed in the Grant Letter solely for Your own internal business operations. Your use of the Software includes the right to download, install, and access the Software. You are not granted rights to Updates and Upgrades unless You have purchased Support (or a service subscription granting rights to Updates and Upgrades).

2. USAGE RIGHTS.

- 2.1 **Product Entitlement.** Your entitlement to use the Software is subject to the quantity limits and usage metrics described in the applicable Grant Letter and applicable Product Entitlement Definitions for the type of licenses You have purchased (e.g., nodes).
- 2.2 **Multiple Platforms/Bundles.** If the Software supports multiple platforms, or if You receive the Software bundled with other Software, the total number of devices on which all versions of the Software is installed may not exceed the Customer Product Entitlement Definitions. Certain Software licensed as part of a suite-based Product may also require the purchase of a separate Company server license to use the Software on certain types of servers, in each case as specified in the applicable Documentation.
- 2.3 **Term.** The license is effective for the time specified in in the Grant Letter. If no term is specified, the license is perpetual.
- 2.4 **Copies.** You may copy the Software as reasonably necessary for back-up, archival, or disaster recovery purposes.
- 2.5 **Affiliates, Managing Parties.** You may permit use of the Software in accordance with this Agreement:
- (a) by an Affiliate;
 - (b) by a third-party with which You enter into a contract to manage Your information technology resources (“**Managing Party**”) if:

- (i) the Managing Party only uses the Software for Your internal operations and not for the benefit of another third-party or itself;
- (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement; and
- (iii) You provide Us with written notice that a Managing Party will be using the Software on Your behalf.

You are responsible and fully liable for each Affiliate's and Managing Party's compliance with, or breach of, this Agreement.

2.6 General Restrictions. You shall not, and shall not cause or allow any third-party to:

- (a) decompile, disassemble, or reverse-engineer the Software, or create or recreate the source code for the Software;
- (b) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies You make of the Software and Documentation;
- (c) lease, lend, or use the Software for timesharing or service bureau purposes;
- (d) except as expressly permitted in this Agreement, sell, market, license, sublicense, distribute or otherwise grant to any person or entity any right to use the Software; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise;
- (e) modify, adapt, tamper with, translate or create Derivative Works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Software to compete with Us;
- (f) except with Our prior written permission, publish any performance or benchmark tests or analysis relating to the Software;
- (g) attempt to do any of activities in subsections (a) to (f) above; or
- (h) run or operate the Software in a cloud, internet-based computing, or similar on-demand computing environment unless Your Grant Letter or the applicable Product Entitlement Definitions specifically allows such use.

3. TECHNICAL SUPPORT AND MAINTENANCE.

Our Technical Support and Maintenance Terms and Conditions apply and are incorporated herein if You have purchased Support. After the Support Period or service subscription period specified in a Grant Letter has expired, Your entitlement to Support ends. We may change the Support offered at any time, with such change to become effective as of the commencement of any Support renewal period unless a date of such commencement specified otherwise in Our notices.

4. TERMINATION.

- 4.1 Without prejudice to Your payment obligations, You may terminate Your license at any time by uninstalling the Software.
- 4.2 We may terminate Your license if:

- You materially breach this Agreement or Your breach cannot be cured.
 - You otherwise breach this Agreement and fail to cure the breach within thirty (30) days of receiving Our notice of the breach.
- 4.3 Upon termination, You must promptly return, destroy, or permanently delete all copies of the Software and Documentation.
- 4.4 **End-of-Life.** Your right to use or obtain Support for the Software, and any Software features is subject to Our End-of-Life Policy. Upon the End-of-Life date of a Software Product or any feature of a Software Product (as We determine in accordance with the End-of-Life Policy), Your right to use or obtain Support for the Software or Software feature shall terminate.

5. PAYMENT, TAXES, SOFTWARE DEPLOYMENT VERIFICATION.

- 5.1 **Payment.** If You purchased Software license(s) through an Authorized Partner, Your payment obligations are exclusively between You and the Authorized Partner. If You have purchased Software license(s) directly from Us, You agree to pay Us the license fees for the Software within thirty (30) days of the invoice date. Late payments are subject to interest of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If You consider an invoice to be incorrect, You must contact Us in writing within thirty (30) days of the date of invoice to request an adjustment or credit.
- 5.2 **Transaction Taxes.** If You purchase Software license(s) directly from Us, You agree to pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by You under this Agreement (“**Transaction Taxes**”). We will separately state on invoices the Transaction Taxes that We are required to collect from You under applicable law. You will provide proof of any exemption from Transaction Taxes to Us at least fifteen (15) Business Days before the due date for paying an invoice. If We do not collect the required Transaction Taxes from You but are subsequently required to remit the Transaction Taxes to any taxing authority, You will promptly reimburse Us for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to Our fault.
- 5.3 **Withholding Taxes.** All payments due will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If You are required by applicable law to deduct or withhold income taxes from amounts payable to Us under this Agreement (“**Withholding Taxes**”), You will remit, and provide Us with evidence that You have remitted the Withholding Taxes to the appropriate taxing authority and paid the remaining net amount. You will provide written notice to Us of Your intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Us to reduce any Withholding Taxes. If We provide You with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then You will apply the lower rate.
- 5.4 If You purchase Software license(s) through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner or You, and the terms in Sections 5.2 and 5.3 do not apply as between Us and You.
- 5.5 **Income Taxes.** Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 5.6 **Software Deployment Verification.** No more than once per year, We may request that You provide to Us, within thirty (30) days of Our request, either (a) a systems report (if the Software You have enables You to generate such a report) or (b) an accurate Software deployment verification report for the Software (if the Software You have does not contain the technical features to generate a systems report). You acknowledge that the systems report is based on technological features of the Software

that provide Software deployment verification. If the systems report or Your prepared Software deployment verification report indicates that You are out of compliance with the license terms of Your Grant Letter and this Agreement, You agree to purchase the additional licenses and pay Us the applicable reinstatement fees associated with the licenses and Support. We may also charge You out-of-compliance fees.

6. CONFIDENTIALITY.

6.1 Each Party acknowledges that it may have access to Confidential Information of the other Party in connection with this Agreement, and that each Party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.

6.2 **Confidential Information** as used in this Agreement means any information (regardless of the form of disclosure or the medium used to store or represent it) of a Party ("**Disclosing Party**"), including trade secrets and technical, financial, or business information, data, ideas, concepts, or know-how, that:

- (a) is designated as "confidential" or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
- (b) the receiving party ("**Recipient**") should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

- (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
- (b) is received from a third-party rightfully in possession of such information without restrictions on its use or disclosure and not by inadvertence or mistake;
- (c) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
- (d) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.

6.3 **Restrictions.** Each Recipient of Confidential Information under this Agreement must:

- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
- (b) not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third-party except to perform its duties, exercise its rights, or is otherwise authorized under this Agreement; and
- (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under this Agreement, provided that:
 - (i) any disclosure made to the Recipient's employees, contractors, or agents is on a need to-know basis; and
 - (ii) the Recipient's employees, contractors, or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.

- 6.4 Notwithstanding the restrictions in Section 6.3, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any regulator, court, arbitral, administrative, or legislative body, the Recipient must:
- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
 - (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
 - (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.
- 6.5 You will immediately, and at least within seventy-two (72) hours, notify Us if Confidential Information is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this section, We are immediately entitled to enforce Our rights by specific performance or injunction proceedings, in addition to any other rights or remedies We may have.
- 6.6 Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the Parties at the time), each Party will return, destroy, or delete permanently (at the Disclosing Party's election) the other Party's Confidential Information.
- 6.7 On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this Section 6.

7. INTELLECTUAL PROPERTY RIGHTS.

- 7.1 The Software is considered Our Confidential Information, and We (or Our licensors) own exclusively and reserve all rights, title, and interest in and to the Software and Documentation, including all Intellectual Property Rights therein, as well as any Derivative Works.
- 7.2 You may not exercise any right, title, and interest in and to the Software or Documentation, or any related Intellectual Property Rights, except for the limited usage rights granted to You in this Agreement. You agree, on behalf of Yourself and Your Affiliates, that You and Your Affiliates will take no action inconsistent with Our Intellectual Property Rights.
- 7.3 This Agreement is not an agreement of sale, and does not transfer any title, Intellectual Property Rights or ownership rights to Software or Documentation to You. All Software is licensed to You and is not sold. You acknowledge and agree that the Software, Documentation and all ideas, methods, algorithms, formula, processes and concepts used in developing or incorporated into Software or Documentation, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes, hot-fixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy and database updates and other updates in, of, or to Software or Documentation, as applicable, all Derivative Works based on any of the foregoing, and all copies of the foregoing are Our trade secrets and proprietary property, having great commercial value to Us.

8. LIMITED SOFTWARE WARRANTY AND DISCLAIMER.

- 8.1 We warrant that, for a period of ninety (90) days from the purchase date (the "**Warranty Period**"), the Product licensed under this Agreement will perform substantially in accordance with the Documentation.
- 8.2 **Exclusive Remedy.** If the Software does not operate as warranted, at Our option and expense, We shall repair or replace the Software or refund You the price paid for the Software if a repair or replacement of the Software would, in Our opinion, be unreasonable. This limited warranty is

conditioned upon You providing Us prompt written notice of the Software's failure to perform substantially in accordance with the Documentation. Any replacement Software will substantially conform to the accompanying Documentation and be warranted for the remainder of the original Warranty Period. The remedy set forth in this Section 8.2 is Your exclusive remedy.

8.3 **Exclusions.** Sections 8.1 and 8.2 do not apply if:

- (a) the Software is not used in accordance with this Agreement or the Documentation;
- (b) the Software, or any part of the Software, has been modified by any entity other than Us or Our authorized representative;
- (c) a malfunction in the Software has been caused by any equipment or software not supplied by Us;
- (d) the Software was not provided by an Authorized Partner; or
- (e) the Software is provided under an evaluation license for beta, evaluation, test, or demonstration purposes, and in such cases, to the fullest extent not prohibited by law, the Software is furnished "AS IS" with all faults, and without express or implied warranties, conditions, or remedies (as addressed in Section 11).

Additionally, the Software may contain independent third-party software to perform certain functionality, including malware definitions or URL filters and algorithms. We make no warranty as to the operation of any third-party software or the accuracy of any third-party information.

8.4 **DISCLAIMER OF WARRANTIES.** EXCEPT AS SPECIFIED IN THIS SECTION 8, AND TO THE EXTENT PERMITTED BY LAW, WE PROVIDE THE SOFTWARE AND SUPPORT "AS IS", AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SOFTWARE AND SUPPORT, AND EXPRESSLY DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES AND EXPRESS OR IMPLIED WARRANTIES REGARDING THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR MEETING CUSTOMER'S REQUIREMENTS OR USAGE OF TRADE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WE MAKE NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE SOFTWARE'S USE OR PERFORMANCE, OR THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL-SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS, OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

8.5 **HIGH-RISK SYSTEMS TERMS.** THE SOFTWARE MAY FAIL AND IS NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH-RISK SYSTEMS. WE HAVE NO RESPONSIBILITY FOR, AND YOU WILL INDEMNIFY AND HOLD US HARMLESS FROM, ALL CLAIMS, SUITS, DEMANDS AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEY FEES) ARISING FROM OR IN CONNECTION WITH YOUR USE OF THE SOFTWARE ON OR IN A HIGH-RISK SYSTEM, INCLUDING THOSE THAT COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT TOLERANT FEATURES TO THE HIGH-RISK SYSTEM, OR ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF HIGH-RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE SOFTWARE, OR THAT THE FAILURE OF THE SOFTWARE CAUSED A HIGH-RISK SYSTEM TO FAIL.

9. LIMITED HARDWARE WARRANTY.

9.1 The limited Hardware warranty is found at the Trellix Legal Notices website.

10. LIMITATION OF LIABILITY.

10.1 EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL FEES RECEIVED BY US FOR THE APPLICABLE SOFTWARE AND SUPPORT PURCHASED UNDER THE TERMS OF THIS AGREEMENT AND ATTRIBUTABLE TO THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.

10.2 NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OR CORRUPTION OF DATA OR INTERRUPTION OR LOSS OF BUSINESS; OR LOSS OF REVENUES, PROFITS, GOODWILL OR ANTICIPATED SALES OR SAVINGS, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

10.3 THESE LIMITATION OF LIABILITY DO NOT APPLY TO LIABILITY ARISING FROM (A) YOUR FAILURE TO PAY ALL AMOUNTS DUE, OR (B) YOUR BREACH OF SECTIONS 2 (USAGE RIGHTS), 6 (CONFIDENTIALITY) 7 (INTELLECTUAL PROPERTY RIGHTS) OR 14.2 AND 14.3 (COMPLIANCE WITH LAWS). THESE LIMITATIONS OF LIABILITY APPLY WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, INFRINGEMENT, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THESE LIMITATIONS OF LIABILITY ARE CUMULATIVE AND NOT PER INCIDENT.

11. INDEMNIFICATION.

11.1 **Customer Indemnification Obligations.** You shall indemnify and defend Us, Our Affiliates, and Our officers, directors, employees, contractors, and agents (each an “**Indemnified Party**”) against any claims, liabilities, and expenses (including court costs and reasonable attorney fees) that an Indemnified Party incurs as a result of, or in connection with:

- (a) any third-party claims (“**Third-Party Claims**”) arising from:
 - (i) Your failure to obtain any consent, authorization, or license required for Our use of data, software, materials, systems, networks, or other technology You provide to Us under this Agreement;
 - (ii) Your use of the Software in a manner not expressly permitted by this Agreement;
 - (iii) Our compliance with any technology, designs, instructions, or requirements provided by You or a third-party on Your behalf;
 - (iv) any claims, costs, damages, and liabilities whatsoever asserted by any of Your Representatives; or
 - (v) any violation by You of applicable laws; and
- (b) any reasonable costs and attorneys’ fees required for Us to respond to a subpoena, court order or other official government inquiry regarding Your use of the Software.

11.2 **Company Indemnification Obligations.**

- (a) We will defend You against a third-party claim that Your valid use of Our Software in accordance with this Agreement infringes a third-party’s patent, copyright, or registered trademark, when such claim is asserted in a Covered Country against the Software alone,

and not in combination with non-Company product or service, or solely a combination of Our Software (“**Third-Party Claim**”). We will indemnify You against any final judgement entered by a court of competent jurisdiction or any settlements arising out of the Third-Party Claim, subject to Section 11.2 (b) below.

- (b) **Exclusions.** We have no obligation with respect to any Third-Party Claim(s) based on:
- (i) compliance with technology, designs, instructions, or requirements that You, or a third-party acting on Your behalf, provided to Us;
 - (ii) modifications or programming to the Software that were made by anyone other than Us;
 - (iii) use of the Software outside the scope of the applicable Documentation or outside the entitlements granted under this Agreement or the applicable Grant Letter;
 - (iv) Your continued use of the Software that is the subject of a Third-Party Claim, after We have provided You with a modified or new version of the Software at no additional cost that is intended to rectify the alleged infringing Software; and
 - (v) any Software provided on a no charge, beta, or evaluation basis.
- (c) **Remedies.** We may, at Our sole discretion and at Our own expense, with respect to any Software that is subject to a Third-Party Claim:
- (i) procure for You with the right to continue using the Software;
 - (ii) replace the Software with a non-infringing Software;
 - (iii) modify the Software so that it becomes non-infringing; or
 - (iv) upon Your return of a proof of entitlement of the Software to Us and removal of the Software permanently from Your systems, refund the residual value of the purchase price You paid for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to You.

11.3 **Indemnification Procedure.** The indemnified party (“**Indemnitee**”) will: (a) provide prompt written notice to the indemnifying party (“**Indemnitor**”) of the claim (provided that the failure to provide timely notice that prejudices the Indemnitor will relieve the Indemnitor of its obligations under this section to the extent the Indemnitor has been prejudiced and the failure to provide timely notice will relieve the Indemnitor of any obligation to reimburse the Indemnitee for its attorney’s fees incurred prior to notification); (b) reasonably cooperate in connection with the defense or settlement of the claim; and (c) give the Indemnitor sole control over the defense and settlement of the claim, provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnitee.

11.4 **Personal and Exclusive Remedy.** The foregoing indemnities are personal to the Parties and may not be transferred. This Section 11 states each Party’s entire indemnification obligations, and the exclusive remedy regarding Third-Party Claims.

12. ADDITIONAL TERMS.

12.1 **Evaluation Software.** If We identify the Software licensed to You as “*Evaluation*” Software, this Section 12.1 and Section 12.3 apply and supersede any conflicting terms in this Agreement. Your royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless agreed otherwise in writing by Us. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. You may use information about the Evaluation Software gathered from Your use solely for

evaluation purposes and must not provide that information to any third parties. The General Restrictions in Section 2.6 apply. If You fail to destroy the Evaluation Software after the evaluation period has expired, We may, at Our discretion, invoice You in an amount equal to the then-current list price for the Software and You agree to pay such invoice upon receipt.

- 12.2 **Beta Software.** If We identify the Software licensed to You as “Beta” Software, this section, Sections 12.1 (with all references to “Evaluation Software” being replaced with “Beta Software”) and 12.3 apply. We have no obligation to You to further develop or publicly release the Beta Software. Support is not available for Beta Software.
- 12.3 **Feedback.** We welcome any comments, suggestions for improvements, and feedback regarding the Software and other products and services of Us and Our Affiliates (“**Feedback**”). You hereby agree that We own all right, title, and interest in and to the Feedback, including any and all associated Intellectual Property Rights, and that We may use, copy, modify, create Derivative Works based upon, and otherwise exploit the Feedback for any purpose, without notice or attribution to, payment to or consent from You, and You acknowledge that such Feedback will be the Confidential Information of Us, and not You.
- 12.4 **Disclaimer of Warranties.** Our indemnification obligations in Section 11 do not apply to Evaluation Software and Beta Software. Evaluation Software and Beta Software are provided to You solely on an “AS IS” basis. You assume all risk of use of Evaluation Software and Beta Software. If the laws in Your jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and Our aggregate liability and that of Our licensors will be limited to the sum of fifty (50) United States dollars (or the then current value in the relevant local currency) in total.
- 12.5 **“Free” or Open-Source Software.** The Software may include components (including programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open-source software licensing model (FOSS Code). FOSS Code components included with the Software are redistributed by Us under the terms of the applicable FOSS Code license for such component. Your receipt of FOSS Code components from Us under this Agreement neither enlarges nor curtails Your rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software’s Documentation.

13. DATA.

- 13.1 The Software or Support may employ applications and tools to collect Data. Our collection of Data may be necessary to provide You and End Users with the relevant Software or Support functionalities as ordered (including detecting and reporting threats and vulnerabilities on Your and End Users’ computer network), to enable Us to improve Software or Support (including content synchronization, device tracking, troubleshooting, etc.), to manage licenses to Software or Support, and to further or improve overall security. You may be required to uninstall the Software or disable Support to stop further Data collection that supports these functions.
- 13.2 In connection with your use of the Software, Support, Product, or Cloud Services, You and Your End Users agree to Our Privacy Policy and to the collection, processing, copying, backup, storage, transfer and use of the Data by Us and Our service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of Your or End Users’ own jurisdiction as part of the Software, Support or service subscription. In addition, unless a separate data processing agreement (or similar agreement) has been executed between the parties, Your use of the Software or Support shall be deemed to be Your agreement to the Data Processing Agreement.

- 13.3 You grant Us a non-exclusive, irrevocable, worldwide, perpetual right and license to use, reproduce and disclose Threat Data for provisioning and improvement of Products and Services, and for threat research purposes (e.g., to enhance the understanding of Malware, threats, and vulnerabilities). This includes without limitation compiling statistical and performance information and making such anonymized information publicly available.
- 13.4 You will secure all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or Your internal policies or guidelines to disclose Your Data, to use the Software, and/or in connection with Our performance of Support or otherwise under this Agreement.

14. COMPLIANCE WITH LAWS.

- 14.1 Each Party will comply with the applicable national, state, and local laws with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, and the U.S. Foreign Corrupt Practices Act (FCPA), and other applicable anti-corruption laws.
- 14.2 You will not, directly or indirectly, export, transmit, permit access or use any of the Software or technical data (or any part of Software or technical data) or system or service incorporating any of the Software to or in any country to which export, transmission or access is restricted by regulation, statute or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other competent governmental entity that may have jurisdiction over export or transmission. You will not use, transfer, or access any Software for end use relating to any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.
- 14.3 You acknowledge and agree that certain Software containing encryption may require authorization from the U.S. Government and other competent authorities including the European Union, prior to export. You also acknowledge and agree that certain Software containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Software may be found on Our Export Compliance webpage.

15. GENERAL PROVISIONS.

- 15.1 **Relationship.** The Parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary, or other special relationship. Neither Party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the Parties and listed Affiliates. This Agreement is not intended to create a third-party beneficiary of any kind.
- 15.2 **Severability.** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
- 15.3 **No Waiver.** A Party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the Party agreeing to the waiver.
- 15.4 **Force Majeure; Other Excusable Failures Or Delays In Performance**
- (a) Neither Party is liable for delays or failures to perform any of its obligations under this

Agreement to the extent caused by a Force Majeure Event.

- (b) Failures or delays in Our performance are excused to the extent they result from:
- (i) Your acts or omissions, or those of Your employees, agents, users, affiliates, or contractors;
 - (ii) notwithstanding the generality of Section 15.4(b)(i), Your failure or delay in the performance of a specific task, obligation or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a task, obligation, or responsibility;
 - (iii) reliance on instructions, authorizations, approvals, or other information from You; or
 - (iv) acts or omissions of third parties (unless directed by Us).

15.5 Governing Law and Venue. All disputes arising out of or relating to this Agreement, or its subject matter will be governed by the substantive laws as set forth in the table below based on Your primary place of business and regardless of and excluding rules relating to conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

The courts listed below shall have exclusive jurisdiction to hear any dispute arising out of, or related to, this Agreement. Each Party agrees to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, either Party may seek interim injunctive relief in any court of applicable jurisdiction with respect to any alleged breach of Intellectual Property Rights or the confidentiality terms herein.

Customer Primary Place of Business	Governing Law	Venue
United States, Mexico, Central America, Canada, South America or the Caribbean and any other location not listed in this table.	Laws of the State of California, U.S.	State courts in the County of Santa Clara, California, and the Federal Courts of the Northern District of California
Europe, Middle East, and Africa	Laws of the Republic of Ireland	Irish courts
Asia Pacific, excluding Australia, Japan	Laws of the Republic of Singapore	Singapore courts
Australia	Laws of New South Wales, Australia	Courts of New South Wales, Australia
Japan	Laws of Japan	Tokyo District Court of Japan

If You are a public sector government entity in the United States (excluding the U.S. Government), the laws of the state or territory where You are located primarily located shall govern any dispute arising under this Agreement. If You are the U.S. Government, the laws of the United States shall govern any dispute arising under this Agreement.

15.6 Entire Agreement, Order Of Precedence And Amendments

This Agreement constitutes the entire understanding between the Parties relating to its subject-matter and supersedes all prior or contemporaneous oral or written communications between the

Parties relating to its subject-matter.

- (a) This Agreement, including all documents incorporated by reference, as well as the Grant Letter, will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by You, and whether or not expressly rejected by Us.
 - (b) We reserve the right to amend any terms of this Agreement, including all documents incorporated by reference, at any time at Our own discretion without prior notice to You. Any amendment will be effective on the posting of an updated version on the Trellix Legal Notices website or by otherwise publicly notifying You.
- 15.7 **Notices.** Notices and consents required or permitted to be given under this Agreement must be in writing. Notices will be considered delivered upon the earliest of (a) when received, (b) the next business day after being sent to a domestic address by pre-paid, nationally recognized, overnight air courier with tracking capabilities, or (c) 5 business days after being sent by registered or certified airmail, domestically or internationally, return receipt required, postage prepaid. Notices to Us shall be made to the applicable address for Us provided in the Definitions section below. Notices to You shall be made to Your designated point of contact and address, as provided to Us in connection with this Agreement.
- 15.8 **Assignment.** You may not sublicense, assign, or transfer Your rights under this Agreement without Our prior written consent. Any attempt by You to sublicense, assign, or transfer any of Your rights, duties, or obligations under this Agreement, whether directly, or indirectly by merger, acquisition or change of control, will be null and void.
- 15.9 **Notice to U.S. Government End Users.** The Software and accompanying Documentation are considered “*commercial computer software*” and “*commercial computer software documentation*,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Software and accompanying Documentation by the United States Government will be governed solely by this Agreement and will be prohibited except to the extent expressly permitted by this Agreement.
- 15.10 **Survival.** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 6 (Confidentiality), 7 (Intellectual Property Rights), 8 (Limited Software Warranty and Disclaimer), 9 (Limited Hardware Warranty), 10 (Limitation of Liability), 11 (Indemnification), 12.3 (Disclaimer of Warranties regarding Evaluation Software and Beta Software), 13 (Privacy), 15.5 (Governing Law and Venue), this Section 15.10 (Survival), and 16 (Definitions).
- 15.11 **Third-Party Software Licenses.** Use of Our Products or some features thereof may require that Customer have licenses for third-party software that has or has not been distributed with Our Products; in either case, the Customer is responsible for purchasing such third-party software licenses.

16. DEFINITIONS.

Capitalized terms used in this Agreement have the following meanings:

Authorized Partner means any of Our Affiliates, Distributors, Resellers, or other business partners.

Affiliate(s) as used herein, means any entity that Controls, is Controlled by, is under common Control with a Party, or is Controlled by the same parent entity as a Party, where “Control” or “Controlled” means direct or indirect ownership, through one or more intermediaries of greater than 50% of an entity’s voting capital or other voting rights.

Business Day means any day other than a Saturday, Sunday, statutory or public holiday in the place where Our Software is provided.

Company or “We,” “Our,” “Us” means:

- (i) **Musarubra US LLC**, with offices located at 6000 Headquarters Drive, Suite 600, Plano, Texas 75024, USA, (1) if the Software is purchased in the United States, Canada, Mexico, Central America, South America, or the Caribbean, or (2) solely as the licensor of the Software if the Software license is purchased in Japan or in Asia Pacific (but excluding Australia and China (in RMB));
- (ii) **Musarubra Australia Pty Ltd.**, with offices at Level 14, 80 Pacific Highway, North Sydney NSW 2060, Australia, if the Software license is purchased in Australia;
- (iii) **Musarubra Ireland Limited**, with its office located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Software license is purchased in Europe, the Middle East or Africa;
- (iv) **Musarubra Japan KK**, with its registered office located at Shibuya Mark City West, 1-12-1 Dogenzaka, Shibuya-ku, Tokyo 150-0043, Japan, with respect to the distribution of the Software license purchased in Japan;
- (v) **Musarubra Singapore Pte Ltd.**, with a trading address located 238A Thomson Road, #12-01/05 Novena Square, Tower A, Singapore, 307684, with respect to the distribution of Software license purchased in Asia Pacific (but excluding China (in RMB) or Australia);
- (vi) **Trellix (Beijing) Security Software Co. Ltd.**, with a trading address located at Beijing Diplomatic Centre, 17/F, Tower D1, DRC Diplomatic office Building, No.19 Dongfangdong Road, Chaoyang District, Beijing 10016, if the Software license is purchased in China (in RMB); or
- (vii) **Trellix Public Sector LLC**, with offices located at 1640 Boro Place, 3rd Floor, McLean, Virginia 22102, USA, if the Software license is purchased by the U.S. Government, or state or local governments, government healthcare organizations or educational institutions within the United States.

Covered Country means any country that is a member of the Berne Convention where the Company (as defined in this Section 16) is incorporated.

“Data” means Personal Data, sensitive data or other information about You and End Users (including End Users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (including information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Software installed, Our components, processes and services information, frequency and details of update of Our components, information about third-party products installed, extracts of logs created by Us, usage patterns of Software and specific features, etc.).

Data Processing Agreement means Our “Customer Data Processing Agreement” made available on the Trellix Legal Notices website located at: <https://www.trellix.com/en-us/assets/legal/customer-data-processing-agreement.pdf>.

DATs means detection definition files (also referred to as signature files) that contain the codes anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.

Derivative Work means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed, or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

Documentation means any explanatory materials, such as user manuals, training materials, product

descriptions, regarding the implementation and use of the Software that We make available to You. Documentation is provided in printed, electronic, or online form.

Distributor means any independent entity authorized by Us to distribute the Software and Support to Resellers or End Users.

End-of-Life Policy means Our end-of-life policies located at:

<https://trellix.com/en-us/assets/docs/legal/support-policy-product-support-eol.pdf>;

<https://www.fireeye.com/support/products.html>; and

https://www.skyhighsecurity.com/wp-content/themes/skyhigh-security/public/EOL_Policy-Skyhigh%20Security_051123.pdf.

End User means the individual or legal entity who is licensed and authorized to use the Software under this Agreement.

Export Compliance webpage means Our webpage located at: <https://www.trellix.com/en-us/about/export-compliance.html>.

Force Majeure Event means any event beyond a Party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third parties), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by Our vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.

Grant Letter means any written (electronic or otherwise) confirmation notice that We issue to You confirming the Software license(s) purchased and applicable Product Entitlement Definitions. The Grant Letter identifies the SKU number, quantity, Subscription Period or Support Period, and other access and use details.

Hardware means hardware equipment (together with all parts, elements, or accessories, and any combination of them) purchased during the Term from Us or an Authorized Partner, and identified in an applicable Grant Letter, excluding any Software or other intangible items (whether or not pre-loaded on hardware or subsequently loaded on hardware by You, Us, or any other person or entity).

High-Risk System means a device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High-Risk Systems may be required in critical infrastructure, industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

Intellectual Property Rights means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including: (i) copyright, trademark and patent rights, trade secrets, moral rights, right of publicity; (ii) authors' rights; and (iii) any application or right to apply for any of the rights referred to in (i) above. **Malware** means applications, executable code, or malicious content that We consider be harmful.

Open-Source Software means any royalty-free software that requires, as a condition of use, modification

or distribution of the software or any other software incorporated into, derived from, or distributed with the software (“Derivative Software”), any of the following:

- (i) The source code of the software or any Derivative Software must be released or otherwise made available to third parties;
- (ii) Permission for creating derivative works of the software or any Derivative Software must be granted to third parties; and
- (iii) Changes made to the software must be documented and disclosed when the software or any Derivative Software is being distributed.

Open-Source Software includes any software that is subject to: the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, Affero GNU General Public Licenses, or any license listed on www.opensource.org/licenses.

Personal Data or Personal Information means any information relating to an identified or identifiable individual or is otherwise defined as ‘*Personal Data*’ under the General Data Protection Regulation or other applicable data protection laws. to the extent that the definition of ‘*Personal Data*’ under the applicable data protection laws is broader than the preceding definitions.

Privacy Policy means Our published privacy policy located at: <https://www.trellix.com/en-us/about/legal/privacy.html>.

Product means Trellix-branded Software and/or Hardware.

Product Entitlement Definitions means the license or subscription types set forth in the Grant Letter and which are defined in the document entitled “Product Entitlement Definitions” or in the Supplement posted on the Trellix Legal Notices website.

Representatives means a Party’s Affiliates, permitted resellers, subcontractors, or authorized agents.

Reseller means an Authorized Partner who is authorized by Us to market and resell Software licenses and Support.

Software means any software program owned or licensed by Us, as the context require, in object code format and applicable Documentation: (i) licensed from Us and purchased directly from Us or Our Authorized Partners; or (ii) embedded in or pre-loaded on Our branded hardware equipment purchased from Us or one of our Authorized Partners, in each case including Upgrades and Updates that the End User installs during the applicable Support Period. Software may also include additional features or functionality that can be accessed with either a subscription or Support agreement to certain cloud Services as required by the specific offering and subject to the Cloud Services Agreement made available on the Trellix Legal Notices website located at: <https://www.trellix.com/en-us/about/legal/cloud-terms-of-service.html>.

Supplement mean the Supplement terms posted on the Trellix Legal Notices website that pertain to specific Products identified in each Supplement.

Support or Technical Support means the services that We (or an Authorized Partner) provide for the support and maintenance of the Software, as specified in the Technical Support and Maintenance Terms and Conditions. You can receive proactive Support notification by subscribing to Our Support Notification Service (SNS) available at: https://supportm.trellix.com/webcenter/portal/supportportal/pages_tools.

Support Period means the period for which the End User is entitled to Support, as specified in a Grant Letter.

Technical Support and Maintenance Terms and Conditions means Our Technical Support and Maintenance for Hardware and Software terms and conditions, available on the Trellix Legal Notices website.

Threat Data means non-personally identifying and non-Customer identifying information about Malware,

threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

Trellix Legal Notices website means the Legal Notices web page located at: <https://trellix.com/enus/about/legal.html>.

Updates means any update to the content of the Software or cloud Services, and includes all DATs, signature sets, policy updates, database updates for the Software or cloud Services, and updates to the related Documentation that are made generally available to End Users after the date of purchase of the Software or of subscription of the cloud Services as a part of purchased Support. Updates are not separately priced or marketed by Us.

Upgrade means all improvements in the Software or cloud Services that are generally made available to End Users as a part of purchased Support. Upgrades are not separately priced or marketed by Us.

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APPENDIX B

CLOUD SERVICES AGREEMENT

This Cloud Services Agreement, together with any Supplement terms (the “Agreement”) is an agreement between the Company (as defined below, or “We,” “Us,” “Our”) and you, whether individually or on behalf of an entity, as applicable and identified in the Grant Letter (“Customer,” “You,” “Your,” or “Yourself”). Company and Customer may each be referred to in this Agreement as a “Party” or together as the “Parties.”

By accessing or using the Cloud Services, You agree to this Agreement on behalf of You and Users and You represent and warrant that You have full authority to bind You and Users to this Agreement. If You do not agree to this Agreement, You may not access or use the Cloud Services, and You must immediately notify Us to cancel the Cloud Services identified in the Grant Letter without accessing or using the Cloud Services. In the event You purchase from an Authorized Partner, the terms of this Agreement apply to Your use of the Cloud Services and prevail over any inconsistent provisions in Your agreement with such Authorized Partner.

If You are accepting this Agreement on behalf of another person or other legal entity, You represent and warrant that You have full authority to bind that person or legal entity to this Agreement. If You have not paid for a subscription to the Cloud Services, such services are deemed an *Evaluation Product* under Section 12.

Capitalized terms used in this Agreement have the meaning assigned to them in Section 15 or elsewhere in this Agreement.

1. RIGHT OF USE AND RESTRICTIONS

- 1.1 **Right to Access and Use.** Subject to the terms of this Agreement, We grant You a limited, revocable, nonexclusive, nontransferable, non-assignable, non-sublicensable worldwide right to access and use the Cloud Services described in the Grant Letter during the applicable Subscription Period solely for Your internal business purposes in accordance with the Agreement and the entitlements set out in the Grant Letter(s). Use of the Cloud Services depend on the types of subscriptions purchased (e.g., Users) and are subject to the Product Entitlement definitions on the applicable date of Your Grant Letter. You must have an active subscription to the Cloud Services in order to continue to receive access to the Cloud Services. User-based subscriptions may not be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Cloud Services.
- 1.2 **Affiliates.** You may permit Affiliates to use the Cloud Services in accordance with this Agreement, provided that You are responsible and fully liable for each Affiliate’s compliance with this Agreement.
- 1.3 **Access Software.** If We provide Software to You to access the Cloud Services, You must access the Cloud Services with that Software. Such Software is provided to You subject to the EULA, which applies with respect to any Software. Such Software may include, without limitation, APIs, cloud connectors, key agents, integrators, and extensions that may be used to access or integrate with the Cloud Services. Any conflict or inconsistency between the EULA and this Agreement will be resolved in favor of the EULA if it relates to Software, and this Agreement as it relates to Cloud Services or other matters.
- 1.4 **Developer Portal APIs Provided as a Service.** You may use any APIs and instructions that We may make available through Our developer portal in accordance with this Agreement for integration of Our Cloud Services with non-Company applications for Your internal, non-commercial, non-production network environment use only, except as otherwise mutually agreed in writing. We have no responsibility, and You are wholly responsible for any API integration by You with non-Company applications or for any third parties processing of data sent via API at Your direction. APIs ARE PROVIDED “AS IS” WITH NO WARRANTY WHATSOEVER, EXPRESS, OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

- 1.5 **Managing Parties.** If You enter into a contract for a third-party to manage Your information technology resources (“Managing Party”), You may authorize the Managing Party to use the Cloud Services on Your behalf, provided that:
- (a) the Managing Party only uses the Cloud Services for Your internal business operations;
 - (b) the Managing Party agrees in writing to be bound by this Agreement;
 - (c) You provide Us with written notice that a Managing Party will be using the Cloud Services on Your behalf; and
 - (d) You remain responsible for all use of the Cloud Services by the Managing Party.
- 1.6 **Restrictions.** You will not, and will not allow Users or any third parties to:
- (a) license, sublicense, access, use, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Cloud Services available to any third-party;
 - (b) modify, decompile, reverse engineer, or copy the Cloud Services, or any of their components;
 - (c) access or use the Cloud Services to build or support any products or services competitive with the Cloud Services;
 - (d) use the Cloud Services to conduct fraudulent activities;
 - (e) attempt to gain unauthorized access to the Cloud Services, engage in any denial-of-service attacks, or otherwise cause immediate, material, or ongoing harm to Us, the provision of the Cloud Services, or to others;
 - (f) impersonate or misrepresent an affiliation with a person or entity;
 - (g) access or use the Cloud Services for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without Our express written permission;
 - (h) falsely identify Yourself or provide any false information to establish any account that will be used to gain access to and/or use of any Company Products;
 - (i) use the Cloud Services to initiate or propagate Malware;
 - (j) use the Cloud Services as an HTTP server that allows third-party relay or proxy of web traffic; or
 - (k) use the Cloud Services in a manner that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement.

Each of (a) to (k) is a “Prohibited Use”. A Prohibited Use is a material breach of this Agreement, as determined at Our sole discretion.

1.7 **Right to Use Customer Data.**

- (a) You grant Us a non-exclusive, royalty-free right and license to access and use the Customer Data as necessary during the Subscription Period:
 - (i) for Us to provide the Cloud Services and Support to You during the Subscription Period; and
 - (ii) for administering this Agreement, including assuring that the right number of subscriptions and/or User accounts have been issued.

2. YOUR OBLIGATIONS

- 2.1 **Access.** You are responsible for all activity occurring under Your Cloud Services and Support accounts. You will provide Us with all information and assistance required to supply the Cloud Services or enable Your use of the Cloud Services. You will immediately notify Us of any unauthorized account use or other suspected security breach, or unauthorized use, copying or distribution of Cloud Services, Documentation or Customer Data.
- 2.2 **System Administrator.** As needed, You will provide Us contact information for Your system administrator, who is authorized to provide the information required to configure and manage the Cloud Services (“System Administrator”). Depending on the Cloud Services purchased, We may provide You with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
- 2.3 **Updated Information.** You must provide current and complete Users’ information as necessary for Us to manage Your account.

3. TECHNICAL SUPPORT SERVICE

We will provide Support to You in accordance with the applicable Service Schedule. The Support and/or any Support terms may be updated from time to time; however, provided that the updates do not materially reduce the level of performance, functionality, or availability of the Support during the Subscription Period.

4. PRIVACY AND USE OF DATA

- 4.1 Each Party must comply with applicable laws governing the collection, use and disclosure of Personal Data and must obtain consents required with respect to the handling of Personal Data. Unless a separate written agreement has been executed between the Parties, Your use of the Cloud Services shall be deemed to be Your agreement to the Data Processing Agreement (“DPA”) as set out in full on Our website, located at <https://www.trellix.com/en-us/assets/docs/legal/customer-data-processing-agreement.pdf>. In the event of any conflict between the terms of the DPA and the Agreement, the terms of the DPA will take precedence.
- 4.2 You grant Us a non-exclusive, irrevocable, worldwide, perpetual right and license to use, reproduce and disclose Threat Data and deidentified material for improvement of products and services; research to enhance understanding of Malware, threats, and vulnerabilities; and to improve overall security. This includes without limitation compiling statistical and performance information and making such information publicly available. We retain all rights in Threat Data and aggregated and anonymized data.
- 4.3 You agree that Company Products, Services, Software, hardware, appliances, or Support may employ applications and tools to collect Customer Data. You agree that such collection of Customer Data may be necessary to provide You and Users with the relevant functionalities. You may be required to uninstall, disable, or cease use of the above to stop further Customer Data collection, including under the circumstances described in Section 5 below. Your use of Company Products and Services is further subject to our Company Privacy Notice.
- 4.4 You represent and warrant that You:
 - (a) have the legal rights and applicable consents to provide Customer Data to Us;
 - (b) have provided any required notices and have obtained any consents and/or authorizations (including any required from Users) related to Your use of any Company Products and Our processing of Customer Data (including any Personal Data); and
 - (c) will comply with all applicable laws, rules, and regulations for collecting, processing, and transferring Customer Data to Us.
- 4.5 You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Cloud Services rely on Customer Data supplied by You, and We are not liable

for the content of Customer Data. Except as required under applicable law, We do not assume any duty or obligation to correct or modify Customer Data. Except as provided in this Agreement, You retain all right, title, and interest in and to Customer Data.

- 4.6 Without prejudice to Sections 4.1 to 4.5 above, You are responsible and liable for: (a) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Customer Data, including any Malware contained in the Customer Data; and (b) You and Users' use of any Company Product in a manner that is inconsistent with this Agreement.
- 4.7 To the extent You disclose or transmit Customer Data to a third-party, We are no longer responsible for the security, integrity, or confidentiality of such content outside of Our control.

5. TERM; TERMINATION; SUBSCRIPTION PERIODS

- 5.1 **Term.** This Agreement will continue until terminated in accordance with this Agreement. If any subscription is in effect when the Term of this Agreement terminates or expires, this Agreement will remain in effect solely for the purposes of the subscription until the subscription expires or terminates.
- 5.2 **Termination for Cause.** Either Party may terminate this Agreement immediately for cause if:
- (a) the other Party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first Party specifying the breach and requiring it to be remedied, or if the breach is incapable of remedy;
 - (b) the other Party or its property is subject to insolvency or receivership procedures;
 - (c) the other Party becomes insolvent or unable to pay its debts as they mature;
 - (d) the other Party makes an assignment for the benefit of creditors; or
 - (e) the other Party becomes the subject of any other proceeding under any bankruptcy, insolvency, or debtor's relief law.
- 5.3 **End-of-Life.** Your right to access and use the Cloud Services, and any features of the Cloud Services, are subject to the End-of-Life Policies at <https://trellix.com/en-us/assets/docs/legal/support-policy-product-support-eol.pdf> and https://www.skyhighsecurity.com/wp-content/themes/skyhigh-security/public/EOL_Policy-Skyhigh%20Security_051123.pdf (applicable to Skyhigh Security Cloud Services). Upon the End-of-Life date of a Cloud Service or any feature of a Cloud Service (as described in the End-of-Life Policy), Your right to access and use the applicable Cloud Service or feature will terminate.
- 5.4 **Suspension or Termination of Cloud Service by the Company.** Notwithstanding any provision to the contrary contained herein, We may suspend or terminate the Cloud Services:
- 5.4.1** immediately if We consider it necessary to prevent or terminate any actual or suspected Prohibited Use; or
 - 5.4.2** upon notice to You if:
 - 5.4.2.1** You commit a material breach of this Agreement;
 - 5.4.2.2** We receive notice from an Authorized Partner that You are in material breach of the Agreement (including Your Agreement with the Authorized Partner);
 - 5.4.2.3** We reasonably determine that the volume of data being transmitted or processed through the Cloud Services under Your account is significantly greater than the average use or may cause degradation of the Cloud Services for You or other customers; or
 - 5.4.2.4** there is a threat to the security and integrity of the hosted environment or Customer Data.

Where commercially reasonable to do so, We will provide You with notice and opportunity to remedy such violation prior to any such suspension or termination. Suspension or Termination of Cloud Services by Us will be without prejudice to any rights or liabilities accruing before or during the suspension, including Your obligation to pay fees.

- 5.5 **Termination Obligations.** After termination of a Subscription Period for a particular Cloud Service, You agree that We have no obligation to retain Customer Data for that Cloud Service, which may be permanently deleted as part of Our record and information management practices and in accordance with applicable laws. If any Customer Data is stored by the Cloud Service, You are solely responsible for retrieving that Customer Data.

6. PAYMENTS; TAXES; COMPLIANCE VALIDATION

- 6.1 **Payments.** Unless You are purchasing the Cloud Services through an Authorized Partner, in which case payment obligations will be exclusively between the Authorized Partner and You, You will pay Us the fees for the Company Products within thirty (30) days of the invoice date without any deduction, setoff, or withholding, and except as otherwise specified by Us or Our Authorized Partners in writing, all fees are quoted and payable in United States dollars. Late payments are subject to interest of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable, and all fees are non-refundable except to the extent expressly provided for in this Agreement. Any ongoing or recurring fees or rates by reference to which such fees are calculated may be increased on an annual basis upon at least thirty (30) days' written notice before any periodic renewal of the Cloud Services. If You believe in good faith that an invoice is incorrect, You must contact Us in writing within thirty (30) days of the date of invoice to request an adjustment or credit. Notwithstanding the foregoing, if You fail to notify us of any disputed amounts and/or otherwise fail to satisfy any undisputed payments within thirty (30) days of the due date, then We may, without any prior notice, suspend and/or revoke the rights granted herein and stop providing the Cloud Services to You and Users.
- 6.2 **Transaction Taxes.** If You purchase the Cloud Services directly from Us for use or resale, You will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by You under this Agreement ("Transaction Taxes"). We will separately state on an invoice the Transaction Taxes that We are required to collect from You under applicable law. You will provide proof of any exemption from Transaction Taxes to Us at least fifteen (15) Business Days before the due date for paying an invoice. If We do not collect the required Transaction Taxes from You but we are subsequently required to remit the Transaction Taxes to any taxing authority, You will promptly reimburse Us for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to Our fault.
- 6.3 **Withholding Taxes.** All payments due from You will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If You are required by applicable law to deduct or withhold income taxes from amounts payable to Us under this Agreement ("Withholding Taxes"), You will remit, and provide Us with evidence that You have remitted, the Withholding Taxes to the appropriate taxing authority and pay to Us the remaining net amount. You will provide written notice to Us of the intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Us to reduce any Withholding Taxes. If We provide You with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then You will apply the lower rate.
- 6.4 If You purchase the Cloud Services through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner

or You, and the rules in Section 6.2 and 6.3 do not apply as between the Parties.

- 6.5 **Income Taxes.** Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 6.6 **Compliance Validation.** We may request, and You must provide within thirty (30) days from the request date, a system-generated report verifying Your access to and use of the Cloud Services (“System Report”). You acknowledge that the System Report is based on technological features in the Cloud Services to verify access and use verification (including User counts). If the Cloud Services do not contain technological features that provide system-generated use verification, You will take reasonable steps to maintain complete and accurate records of Your use of the Cloud Services sufficient to verify compliance with this Agreement, and within thirty (30) days of Our request, You will provide to Us an accurate Cloud Services access and use verification report for the Cloud Services signed by one of Your senior executives or directors. We will only request the System Report (or Your prepared Cloud Services access and use verification report) once per year (or earlier if there is a good faith belief by Us that there may be noncompliance) and will not unreasonably interfere with the conduct of Your business. If a System Report or Your prepared Cloud Services access and use verification report identifies that You are out of compliance with this Agreement, You will be required to purchase the additional subscriptions and pay the reasonable costs of the audit and any fees associated with the subscriptions and/or Support. We may also charge an out-of-compliance fee.

7. CONFIDENTIALITY

- 7.1 Each Party acknowledges that it may have access to Confidential Information of the other Party in connection with this Agreement, and that each Party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.
- 7.2 **Confidential Information** as used in this Agreement means any information (regardless of the form of disclosure or the medium used to store or represent it) of a Party (“**Disclosing Party**”), including trade secrets and technical, financial, or business information, data, ideas, concepts, or know-how, that:
- (a) is designated as “confidential” or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
 - (b) the receiving party (“**Recipient**”) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

- (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
 - (b) is received from a third-party rightfully in possession of such information without restrictions on its use or disclosure and not by inadvertence or mistake;
 - (c) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
 - (d) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
- 7.3 Each Recipient of Confidential Information under this Agreement must:
- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;

- (b) not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third party except to perform its duties, exercise its rights or is otherwise authorized under this Agreement; and
 - (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under this Agreement, provided that:
 - (i) any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
 - (ii) the Recipient's employees, contractors, or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.
- 7.4 Notwithstanding the restrictions in Section 7.2, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:
- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
 - (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
 - (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.
- 7.5 You will immediately notify Us if Confidential Information is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this section, We are immediately entitled to enforce Our rights by specific performance or injunction proceedings, in addition to any other rights or remedies We may have.
- 7.6 Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the Parties at the time), each Party will return, destroy, or delete permanently (at the Disclosing Party's election) the other Party's Confidential Information.
- 7.7 On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.
- 7.8 **Feedback.** We welcome any comments, suggestions for improvements, and feedback regarding the Cloud Services and other products and services of Us and our Affiliates ("Feedback"). You hereby agree that We own all right, title, and interest in and to the Feedback, including any and all associated Intellectual Property Rights, and that We may use, copy, modify, create Derivative Works based upon, and otherwise exploit the Feedback for any purpose, without notice or attribution to, payment to or consent from You, and You acknowledge that such Feedback will be the Confidential Information of Us, and not You.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 **Ownership.** Our Company Products, Documentation and the software underlying the Cloud Services are considered Confidential Information. We (or Our licensors) own exclusively and reserve all right, title and interest in and to Company Products, Documentation and the software underlying the Cloud Services, including all related Intellectual Property Rights as well as any Derivative Works. You agree, on behalf of Yourself and any Affiliates, that You and Your Affiliates will take no action inconsistent with Our Intellectual Property Rights.

- 8.2 **Reserved Rights.** You may not exercise any right, title, and interest in and to any Company Products, Documentation, the software underlying the Cloud Services or any related Intellectual Property Rights, except for the limited access and usage rights granted to You in this Agreement. This Agreement is not an agreement of sale, and this Agreement does not transfer any title, Intellectual Property Rights or ownership rights to any Company Products, Documentation, or the software underlying the Cloud Services. You acknowledge and agree that the Company Products, Documentation, and the software underlying the Cloud Services, and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the foregoing, and all other improvements, revisions, corrections, modifications, enhancements, releases, detection definition files (or DATs, also referred to as signature files, being the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, content, and other updates in, of, or to the Cloud Services or the software underlying the Cloud Services, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of Us, having great commercial value to Us.

9. WARRANTIES; EXCLUSIONS; DISCLAIMERS

- 9.1 **Warranty.** We warrant that during the Subscription Period, the Cloud Services will perform substantially in accordance with the associated Documentation. Your sole and exclusive remedy for a breach of the foregoing warranty is, at Our option, the repair or replacement of the Cloud Service, or for Us to cause a refund in the form of a credit on a pro-rata basis for the period in which the Cloud Service did not materially comply. This warranty is conditioned upon You providing Us prompt written notice of the Cloud Services' non-conformance and using the Cloud Service as provided in this Agreement and the Documentation.
- 9.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE EXTENT ALLOWED BY APPLICABLE LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. WE MAKE NO, AND SPECIFICALLY DISCLAIM ANY, WARRANTY OR REPRESENTATION THAT THE CLOUD SERVICE: (A) WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR-FREE, FAIL SAFE OR FREE OF VIRUSES; (B) WILL MEET YOUR BUSINESS REQUIREMENTS OR OPERATE WITH YOUR CURRENT SYSTEMS; (C) WILL COMPLY WITH ANY PARTICULAR LAW; OR (D) WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK OR OTHERWISE PROVIDE COMPLETE PROTECTION AGAINST ANY SECURITY THREATS VULNERABILITIES. YOU WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION. YOU ASSUME TOTAL RESPONSIBILITY FOR THE SELECTION OF THE CLOUD SERVICES TO ACHIEVE YOUR INTENDED RESULTS AND FOR YOUR USE OF THE RESULTS OBTAINED FROM THE CLOUD SERVICES. WE DO NOT WARRANT THAT THE CLOUD SERVICES WILL MEET YOUR REQUIREMENTS. IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES, THE ABOVE EXCLUSIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.
- 9.3 **No Guarantee.** NO DATA TRANSMISSION OVER THE INTERNET CAN BE GUARANTEED TO BE SECURE. CUSTOMER ACKNOWLEDGES THAT WE ARE NOT RESPONSIBLE FOR ANY INTERCEPTION OR INTERRUPTION OF ANY COMMUNICATIONS THROUGH THE INTERNET, NETWORKS, OR SYSTEMS OUTSIDE OUR CONTROL AND THAT THE CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. YOU

AGREE THAT YOU ARE RESPONSIBLE FOR MAINTAINING THE SECURITY OF YOUR NETWORKS, SERVERS, APPLICATIONS AND ACCESS CODES. WE ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, LOSS OF CUSTOMER DATA OR DAMAGES RESULTING FROM THOSE PROBLEMS.

- 9.4 **High-Risk Systems Terms.** OUR PRODUCTS MAY FAIL AND ARE NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH-RISK SYSTEMS. WE HAVE NO RESPONSIBILITY FOR, AND YOU WILL INDEMNIFY, DEFEND AND HOLD HARMLESS US, OUR AFFILIATES AND REPRESENTATIVES FROM ALL CLAIMS, SUITS, DEMANDS, AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING, ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH YOUR USE OF OUR PRODUCTS ON OR IN A HIGH-RISK SYSTEM, INCLUDING THOSE THAT COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH-RISK SYSTEM, OR ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH-RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE CLOUD SERVICES, OR THAT THE FAILURE OF ANY OF OUR PRODUCTS CAUSED A HIGH-RISK SYSTEM TO FAIL.
- 9.5 **Third Parties.** Company Products may contain or otherwise interface with certain third-party products, services or applications and rely on such third-party products, services, or applications to enable or perform certain functionality of the Company Products, including Malware definitions or URL filters and algorithms. We make no warranty as to the operation of any third-party products or the accuracy of any third-party information.

10. LIMITATION OF LIABILITY

- 10.1 **NO CONSEQUENTIAL DAMAGES.** SUBJECT TO SUBSECTION 10.3 BELOW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES, BUSINESS OR SYSTEM INTERRUPTION, DENIAL OF ACCESS OR DOWNTIME, ANY LOST OR DAMAGED DATA OR SYSTEMS OR ASSOCIATED RESTORATION COSTS, NOR WILL WE BE LIABLE FOR ANY DAMAGES RELATING TO CLAIMS THAT THE PRODUCTS DID NOT OPERATE INTERRUPTION- OR ERROR-FREE, OR DID NOT PROTECT AGAINST ALL THREATS, IN ALL CASES REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.
- 10.2 SUBJECT TO SUBSECTION 10.3 BELOW, EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL FEES RECEIVED BY COMPANY FOR THE APPLICABLE PRODUCTS PURCHASED UNDER THE TERMS OF THIS AGREEMENT AND ATTRIBUTABLE TO THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY.
- 10.3 **THE LIMITATIONS IN SECTIONS 0 AND 0 ABOVE DO NOT APPLY** TO LIABILITY ARISING FROM (A) YOUR FAILURE TO PAY ALL AMOUNTS DUE, OR (B) YOUR BREACH OF YOUR CLOUD SERVICES ACCESS RIGHTS GRANTED HEREIN, SECTION 13.2 AND 13.3 (EXPORT), OR SECTION 8.1 (INTELLECTUAL PROPERTY RIGHTS). THESE LIMITATIONS OF LIABILITY APPLY WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT

(INCLUDING NEGLIGENCE), EQUITY, INFRINGEMENT, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW. THESE LIMITATIONS OF LIABILITY ARE CUMULATIVE AND NOT PER INCIDENT AND THEY SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

11. INDEMNIFICATION

11.1 **Customer Indemnification Obligations.** You will unconditionally indemnify, defend, and hold Us, Our Affiliates, and their officers, directors, employees, contractors, and agents (each an Indemnified Party) harmless against any claims, liabilities, and expenses (including court costs and reasonable attorneys' fees) that an Indemnified Party incurs as a result of or in connection with:

- (a) any third-party claims arising from:
 - (i) Customer Data, including without limitation Your failure to follow applicable laws or obtain all necessary consents related to Customer Data;
 - (ii) Your use of the Cloud Services in a manner not expressly permitted by this Agreement;
 - (iii) Our compliance with any technology, designs, instructions, or requirements provided by You or a third-party on Your behalf;
 - (iv) any claims, costs, damages, and liabilities whatsoever asserted by any of Your Representatives; or
 - (v) any violation by You of applicable laws or regulations; and
- (b) any reasonable costs and attorneys' fees required for Us to respond to a subpoena, court order or other official government inquiry regarding Customer Data or Your use of the Cloud Services.

11.2 **Company Indemnification Obligations.**

- (a) We will indemnify and defend You and your Affiliates, and their officers, directors, and employees against any third-party claims asserted in a Covered Country against You in a suit or action if: (i) the claim is for patent infringement or copyright infringement, or for Our trade secret misappropriation; and (ii) the claim is asserted against the Cloud Services alone and not in combination with any non-Company product or service.
- (b) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, We will not indemnify or defend You for claims asserted, in whole or in part, against or resulting from: (i) technology, designs, instructions or requirements provided by You or a third-party on Your behalf; (ii) an infringement claim based on third-party content or any material from a third-party portal or other external source that is accessible to You within or from the Cloud Services; (iii) modifications to the Cloud Services or use of the Cloud Services outside the scope of the applicable Documentation or outside of the entitlements granted under this Agreement; (iv) use of non-current or unsupported versions of the Cloud Services; (v) Customer Data; or (vi) Your continued use of Cloud Services or deliverables after being notified of the infringement claim or after being provided a modified version by Us at no additional cost that is intended to address such alleged infringement
- (c) **Remedies.** If We are unable to resolve a claim referred to in section (a) above on commercially reasonable terms, We may, at Our sole discretion and at Our expense either: (i) procure for You the right to continue using the Cloud Services; (ii) replace the affected Cloud Services with a non-infringing version; (iii) modify the affected Cloud Services so that they become non-infringing; or (iv) if We determine that neither (i – iii) are feasible, then, at Our sole option, We may (a) terminate Your subscription and access to the affected item upon Our receipt of Your written confirmation that You will not use and You have removed all instances of the affected

Cloud Services, as applicable; and (b) credit to You the unused pre-paid subscription fees for such products.

THIS SECTION SETS FORTH YOUR SOLE AND EXCLUSIVE REMEDY AND OUR SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE CLOUD SERVICES OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

- 11.3 **Indemnification Procedure.** The foregoing indemnification obligations are conditioned upon: (i) the Party entitled to indemnification (“Indemnified Party”) providing the Party required to indemnify (the “Indemnifying Party”), prompt written notice of a claim (an “Indemnified Claim”), (ii) the Indemnified Party must give the Indemnifying Party the sole right to control and conduct the defense, and any settlement, of the Indemnified Claim provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnified Party; and (iii) the Indemnified Party provides full and timely cooperation to the Indemnifying Party at the Indemnifying Party’s expense all reasonably requested information and assistance. The Indemnified Party may retain its own counsel to monitor the defense of an Indemnified Claim at its own expense. The indemnifying Party will keep the Indemnified Party reasonably advised of the status of each Indemnified Claim.
- 11.4 **Personal and Exclusive Indemnity.** The foregoing indemnities are personal to the Parties and may not be transferred to anyone.

12. EVALUATION PRODUCTS AND FREE SERVICES

- 12.1 **Generally.** If You request or We otherwise provide You with a limited trial or evaluation access to the Cloud Services (“Evaluation Product”) or Free Services, the provisions of this Section will apply and prevail over any other conflicting terms of this Agreement. Your use of an Evaluation Product is limited to thirty (30) days (“Evaluation Period”) unless agreed otherwise in writing by Us. During the Evaluation Period, You may access and use the Evaluation Products solely for Your internal evaluation in accordance with the use guidelines and restrictions set forth in Section 1.6 above to decide whether to purchase the right to use the Evaluation Products. At the end of the Evaluation Period, Your right to use the Evaluation Product automatically expires, and You agree to discontinue all use, and destroy any copies, of the Evaluation Product, as applicable.
- 12.2 **No Support Obligation.** We have no obligation to provide any Support for Evaluation Products or Free Services, and We may change or discontinue any Evaluation Products or Free Services at any time without notice. You acknowledge that the Evaluation Products and Free Services may not have been tested or debugged and may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions, and data loss.
- 12.3 **Disclaimer of Warranties.**
- (a) Notwithstanding any provision to the contrary in this Agreement, our obligations under the following Sections of this Agreement shall not apply to Evaluation Products or Free Services: 3 (Technical Support Service), 4 (Privacy and Use of Data), 9.1 (Warranty) and 11.2 (Company Indemnification Obligations). Evaluation Products and Free Services are provided to You solely on an “as is” and “as-available” basis. To the fullest extent permitted by law, We disclaim any and all liability for Your use of the Evaluation Products and Free Services, and We make no other warranties of any kind, express or implied, with respect to the Evaluation Products and Free Services and disclaim all other obligations and liabilities, or express and implied warranties regarding the Evaluation Products and Free Services, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-infringement; or that the Evaluation Products and Free Services will be free from errors or defects. Evaluation Products and Free Services may be subject to reduced or different security,

compliance, and privacy commitments. You assume all risk of use of Evaluation Products and Free Services. If the laws in Your jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and the aggregate liability of Us and Our licensors will be limited to the sum of fifty (50) United States dollars (or the then-current value in the relevant local currency) in total.

- (b) You acknowledge that We:
 - (i) have not promised or guaranteed to You that any Evaluation Products or Free Services will be announced or made available to anyone in the future;
 - (ii) have not expressed or implied obligation to You to announce or introduce any Evaluation Products or Free Services; and
 - (iii) are not obligated to introduce a product similar to or compatible with Free Services or any updates to any Evaluation Products and Free Services.

12.4 Free Services.

- (a) We are not obligated to finally release any version of the Free Services. You will report to Us unusual, unplanned, or out of the ordinary events observed in a Free Services Access or use of a Free Services is restricted to Your internal performance evaluation of the Free Services in accordance with the use guidelines and restrictions set forth in Section 1.6 above.
- (b) For Free Services that are features or functionality included in a paid subscription for which We no longer charge or which We offer to You at no charge, the Subscription Period for the Free Services continues as long as We make the features or functionality available to You.
- (c) We may, at Our discretion provide Free Services to You before, during or after Your paid subscription to Cloud Services, and subject to the limitations and exclusions set forth in this Section 12, any use is subject to the terms of this Agreement then in effect as long as the Free Services are made available to You.
- (d) Notwithstanding any provision to the contrary in this Section 12, any updates or end-user assistance provided for Free Services may be provided at Our sole discretion and may be discontinued at any time.
- (e) We may elect, at Our sole discretion, to discontinue certain Free Services or particular features of the Free Services at any time (“Free Services Termination”). Free Services are specifically excluded from the End-of-Life-Policy. Instead, We will make commercially reasonable efforts to provide thirty (30) days’ prior notice to You of a Free Services Termination. Upon the effective date of a Free Services Termination, Your right to use the Free Services automatically expires, and You agree to discontinue all use, and destroy any copies, of the Free Services, as applicable
- (f) We have no obligation to retain any Customer Data or other information submitted or collected through the Evaluation Products or Free Services. We may delete any Customer Data and other information at Our own discretion and without prior notice to You.

13. COMPLIANCE WITH LAWS

- 13.1 Each Party will comply with all applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and any other applicable anti-corruption laws.
- 13.2 You will not, directly or indirectly, export, re-export, transmit, transfer, permit access to or use any Cloud Services or technical data (or any part of Cloud Services or technical data), any system or service incorporating any Cloud Services, or any other regulated item or information to or in any country to

which export, transmission or access is restricted by regulation, statute, or other law, without first complying with all export control laws and regulations that may be imposed by the U.S. government and/or any country or organization of nations within whose jurisdiction You operate or do business and obtaining the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other governmental entity that may have jurisdiction over export or transmission. In addition to the foregoing, You agree that You will not export, transfer, or import the Cloud Services to any person or entity on any of the U.S. Government's Lists of Parties of Concern (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>) or applicable international specially designated parties or economic sanctions programs. You hereby certify that You will not use, transfer, or access any Cloud Services, and that such Cloud Services will not otherwise be purposed, re-exported, or retransferred, for end use relating to any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license or to Cuba, Iran, North Korea, Sudan, or Syria for any reason whatsoever.

- 13.3 You acknowledge and agree that certain Company Products containing encryption may require authorization from the U.S. and other applicable authorities including the European Union, prior to export. You also acknowledge and agree that certain Company Products containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Company Products may be found on Company's "Export Compliance" webpage located at <https://www.trellix.com/en-us/about/export-compliance.html>, as updated from time to time.
- 13.4 If We receive notice that You are or become identified as a sanctioned or restricted Party under applicable law, We will not be obligated to perform any of Our obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

14. GENERAL PROVISIONS

- 14.1 **Relationship.** The Parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary, or other special relationship. Neither Party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the Parties and listed Affiliates. The Agreement is not intended to create a third-party beneficiary of any kind. You must not represent to any third-party that You have any right to bind Us in any manner and You will not to make any representations or warranties on Our behalf.
- 14.2 **Severability.** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
- 14.3 **No Waiver; Remedies Cumulative.** A Party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the Party agreeing to the waiver. Notwithstanding any provision of this Agreement to the contrary, We shall have all the rights and remedies provided by law in addition to the rights and remedies set forth in this Agreement and in any other agreement or writing between the Parties. All Our rights and remedies are cumulative and may be exercised from time to time. Our pursuit of one right or remedy shall not constitute an exclusive election or otherwise preclude or limit its pursuit of any other or additional right or remedy.
- 14.4 **Force Majeure; Other Excusable Failures or Delays in Performance.**
- (a) Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default

or breach of this Agreement or otherwise liable for delays or failures to perform any of its obligations under this Agreement (excluding any payment obligations) to the extent caused by a Force Majeure Event.

- (b) Our failure or delays in Our performance are excused to the extent they result from:
 - (i) Your acts or omissions, or those of Your employees, agents, Users, affiliates, or contractors;
 - (ii) notwithstanding the generality of Section 14.4(b)(i), Your failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a task, obligation, or responsibility of Us;
 - (iii) reliance on instructions, authorizations, approvals, or other information from You or Your Representative; or
 - (iv) acts or omissions of third parties (unless directed by Us).

14.5 **Governing Law.** All disputes arising out of or relating to this Agreement, or its subject matter will be governed by the following substantive laws, excluding rules relating to conflict of laws:

- (a) the laws of the State of California, if You purchase Company Products in the United States, Mexico, Central America, Canada, South America, or the Caribbean;
- (b) the laws of the Republic of Ireland, if You purchase Company Products in Europe, Middle East, or Africa;
- (c) the laws of Japan if You purchase Company Products in Japan;
- (d) the laws of the Republic of Singapore, if You purchase Company Products in Asia Pacific (including New Zealand but excluding Australia);
- (e) the laws of the State of New South Wales, Australia, if You purchase Company Products in Australia; or
- (f) the laws of the Republic of Ireland if You purchase Company Products in any other country unless another local law is required to apply.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

14.6 **Jurisdiction.** The following courts will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject-matter:

- (a) the United States District Court for Santa Clara County and state courts located in the state of California, when California law applies;
- (b) the courts in the Republic of Ireland, when the law of Ireland applies;
- (c) the courts in Japan when the law of Japan applies;
- (d) the courts in the Republic of Singapore when the law of Singapore applies; or
- (e) the courts of New South Wales when the law of New South Wales, Australia applies.

14.7 **Entire Agreement; Order of Precedence; and Amendments.**

- (a) This Agreement, any Schedules, and the Grant Letter constitute the entire understanding, between the Parties, relating to its subject matter and supersede all oral or written proposals, and all communications between the Parties relating to its subject matter. The terms of this Agreement will prevail, notwithstanding any variance with any purchase order or other written

instrument submitted by You, whether or not expressly rejected by Us.

- (b) If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency unless expressly agreed otherwise in any subordinate document:
 - (i) The Agreement will prevail over any Service Schedule and Grant Letter; and
 - (ii) The applicable Service Schedule will prevail over the Grant Letter.
 - (c) We reserve the right to amend any terms of this Agreement at any time. Any amendment will be, effective on the posting of an updated version located at <https://www.trellix.com/en-us/about/legal/cloud-terms-of-service.html>.
- 14.8 **Notices.** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the Party giving it, and addressed to Us, “*Attention Legal Department*”, to the applicable address listed in Section 15. We will contact You at the contact information You provide when purchasing or registering for the Cloud Services. Notices will be considered delivered when received if delivered by hand with receipt, the next Business Day after sending it by pre-paid, nationally recognized, overnight air courier with tracking capabilities; or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.
- 14.9 **Additional Documents and References.** References to linked terms in this Agreement are references to the terms or content linked (or the replacement link as We may identify from time to time) as amended from time to time. You acknowledge that the terms or content in the link are incorporated in this Agreement by reference and that it is Your responsibility to review the terms or content in the links referenced in this Agreement.
- 14.10 **Assignment.** You may not sublicense, assign, or transfer Your rights under this Agreement without Our prior written consent. Any attempt by You to sublicense, assign or transfer any of Your rights, duties, or obligations under this Agreement, whether directly, or indirectly by merger or acquisition, will be null and void.
- 14.11 **Notice to U.S. Government Users.** The Cloud Services are considered “*commercial computer software*” and “*commercial computer software documentation*,” under DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display, or disclosure of the Cloud Services by the United States Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
- 14.12 **Community Forum.** You, Users, and other Customers may exchange ideas and technical insight regarding Company Products on community support pages We may make available from time to time. We do not endorse, warrant, or guarantee any information posted on this site and any use of the information is taken at Your sole risk.
- 14.13 **Survival.** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 4.2 (Privacy and Use of Data), 5.5 (Termination Obligations), 7 (Confidentiality), 8 (Intellectual Property Rights), 9 (Warranties; Exclusions; Disclaimers), 10 (Limitation of Liability), 11 (Indemnification), 14.5 (Governing Law), 14.6 (Jurisdiction), 15 (Definitions and Interpretation) and this Section 14.13 (Survival).

15. DEFINITIONS AND INTERPRETATION

In this Agreement:

Affiliate means any entity that Controls, is Controlled by, is under common Control with a Party, or is Controlled by the same parent entity as a Party, where “Control” or “Controlled” means direct or indirect ownership, through one or more intermediaries of greater than 50% of an entity’s voting capital or other voting rights.

Authorized Partner means any of Our Distributors, Resellers, or other business partners. For the avoidance of doubt, Authorized Partners have no authority to modify any of the terms of this Agreement, and any Company Products purchased through Authorized Partners shall remain governed by and subject to the terms of this Agreement.

Business Day means any day other than a Saturday, Sunday, statutory or public holiday in the place where Company Products are provided, or the Professional Services are performed.

Cloud Services means the Cloud Services that We provide to You as specified in one or more Grant Letters and that are subject to the applicable Service Schedule. Our Service Schedule 1 references Our Skyhigh Security cloud offerings, and Our Service Schedule 2 references Our Skyhigh Security and Company cloud offerings.

Company means:

- (i) **Musarubra US LLC**, with offices located at 6000 Headquarters Drive, Suite 600, Plano, Texas 75024, USA, if the Cloud Services are purchased in the United States (except as provided in Subsection (vii) below), Canada, Mexico, Central America, South America, or the Caribbean;
- (ii) **Musarubra Australia Pty Ltd.**, with offices located at Level 14, 80 Pacific Highway, North Sydney NSW 2060, Australia if the Cloud Services are purchased in Australia; or
- (iii) **Musarubra Ireland Limited**, with its offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Cloud Services are purchased in Europe, the Middle East or Africa;
- (iv) **Musarubra Japan KK**, with offices located at Shibuya Mark City West, 12-1, Dogenzaka 1-chome, Shibuya-ku, Tokyo, 150-0043, Japan, if the Cloud Services are purchased in Japan;
- (v) **Musarubra Singapore Pte Ltd.**, with offices located at 238A Thomson Road, #12-01/05 Novena Square, Tower A, Singapore, 307684, with respect to the provision of all Cloud Services and Support purchased in Asia Pacific, but excluding Japan, China (if the Cloud Services are purchased in RMB) or Australia;
- (vi) **Trellix (Beijing) Security Software Co. Ltd.**, with offices located at Beijing Diplomatic Centre, 17/F, Tower D1, DRC Diplomatic office Building, No.19 Dongfangdong Road, Chaoyang District, Beijing 10016, if the Cloud Services are purchased in China (in RMB);
- (vii) **Trellix Public Sector LLC.**, with offices located at 1640 Boro Place, 3rd Floor McLean, Virginia 22102, USA, if the Cloud Services are purchased by the U.S. Government, or by state or local governments, government healthcare organizations or educational institutions within the United States.

Company Privacy Notice refers to Our Privacy Notice, located at <https://www.trellix.com/en-us/about/legal/privacy.html>.

Company Products means any Cloud Services or Support.

Covered Country means any country that is a member of the Berne Convention where the Company (as defined in Section 15) is incorporated.

Customer Data means Your Personal Data, sensitive data or other information about You and Users (including Users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers, including information regarding network, licenses used,

hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, products installed, components, processes and services information, frequency and details of update of Our components, information about third-party products installed, extracts of logs created by Us, usage patterns of Our products and specific features, etc.

Derivative Work means a work that is based on one or more preexisting works (such as arevision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed, or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

Documentation means any explanatory materials, such as user manuals, training materials, user guides, product descriptions, regarding the implementation and use of the Cloud Services and that are provided by Us with the Cloud Services or otherwise made generally available by Us in printed, electronic, or online form.

End User License Agreement or **EULA** means the standard End User License Agreement located at <https://www.trellix.com/en-us/assets/docs/legal/Musarubra-EULA.pdf>, which governs Your use of any Software.

Force Majeure Event means any event that arises after the commencement of this Agreement that is beyond a Party's reasonable control and that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third-party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery or other default by Our vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, epidemics, pandemics, any global, national, or local public health emergency or disease outbreak.

Free Services means any features or functionality included in a paid subscription for which We no longer charge or which We offer to You at no charge, at Our sole discretion, or other features or functionality that We make available to You without charge, that is labeled as "Pre-Release," "Limited Release," "Beta" or otherwise identified by Us as experimental, untested, or not fully functional, and which is not a time-limited trial for Your evaluation purposes.

Grant Letter means any written (electronic or otherwise) confirmation notice that We issue to You confirming the Company Products purchased and applicable Product Entitlement. The Grant Letter identifies the SKU number, quantity, Subscription Period or Support Period, and any other access and use details.

High-Risk System means a device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High-Risk Systems may be required in critical infrastructure, industrial plants, manufacturing facilities, direct life support devices, aircraft, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

Intellectual Property Rights means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:

- (i) copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights;
- (ii) any application or right to apply for any of the rights referred to in paragraph (i); and
- (iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or

applications referred to in paragraphs (i) and (ii).

Malware means applications, executable code, or malicious content that We consider be harmful.

Personal Data means any information relating directly or indirectly to an identified or identifiable individual.

Product Entitlement means the license or subscription types set forth in the Grant Letter and defined at <https://www.trellix.com/en-us/assets/docs/legal/trellix-product-entitlement-definitions.pdf>.

Representatives means a Party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

Service Schedules mean the applicable Cloud Services terms and conditions in Service Schedule 1 located at <https://trellix.com/en-us/assets/legal/cloud-services.pdf> (Service Level Agreement), and Service Schedule 2 located at <https://trellix.com/en-us/assets/legal/cloud-services-skyhigh.pdf>, which are incorporated by reference herein, as amended from time to time.

Software means any software program(s) identified in the Grant Letter or otherwise made available to You and owned or licensed by Us, as the context requires, in object code format, provided by the Parties which may be required for You to access the Cloud Services.

Skyhigh Security means cloud-native security platform that converges a set of security solutions (SWG, CASB, ZTNA, DLP, RBI), providing visibility and control over Your data from a unified console.

Standard means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI.

Subscription Period means the period for which You have purchased the right to receive the Cloud Services or the time-period for which You have purchased the right to receive Support, as applicable.

Supplement mean the Supplement terms posted on the Trellix Legal Notices website that pertain to specific Products identified in each Supplement.

Support means the Technical Support services that We provide for the support and maintenance of the Cloud Services, as specified in the applicable Service Schedule.

Support Period means the period for which You are entitled to Support, as specified in a Grant Letter.

Technical Support Terms means the technical and support terms and conditions located at <https://www.trellix.com/en-us/assets/docs/legal/technical-support-and-maintenance-terms-and-conditions.pdf>.

Threat Data means non-personally identifying and non-Customer identifying information about Malware, threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

Trellix provides an industry-leading device-to-cloud security across multi-cloud and on-premises environments. Our solutions protect data, defend against threats, and provide actionable insights through an open platform and the largest threat telemetry network.

User means a unique individual whom You have authorized to use the Cloud Services pursuant to Your access rights under this Agreement, including Your employees, Your Affiliates, subcontractors, authorized agents, and Managed Parties.

-End-

APPENDIX C

PROFESSIONAL SERVICE TERMS AND CONDITIONS

These Professional Service Terms and Conditions (“**Terms**”) govern the provision of Services by the Company (defined in *Table 1* below, “**We**,” “**Us**,” or “**Our**”) to Customer (“**You**” or “**Your**”) (each a “**Party**” and collectively, the “**Parties**”). By executing a Statement of Work (“**SOW**”), or placing an Order for the Services, You represent that You have full authority to bind Your organization to these Terms. If You do not agree to these Terms, You may not receive the Services.

All capitalized terms herein have the meaning assigned to them in *Attachment 1*.

1. SCHEDULING AND PERFORMANCE OF THE SERVICES

- 1.1 The Services are specified in a SOW, a Service Order, or other written transaction document executed by the Parties.
- 1.2 We may use subcontractors to perform the Services, and in such case, We remain fully responsible for supervising and directing the subcontractors’ performance.
- 1.3 The Parties will agree on a start date for the Services, which in no event will be later than six (6) months from the Service Order Date.
- 1.4 Any completion times identified in the SOW, or the Service Order are only estimates for each Party’s resource scheduling purposes. Unless the Parties otherwise agree in writing, We will perform the Services within one (1) year of the Service Order Date. You acknowledge and agree that if We have not completed the Services within one (1) year of the Service Order Date for reasons that are not attributable to Us, We may, in Our sole discretion, cancel the unperformed Services and retain any pre-paid fees for the unperformed Services.
- 1.5 You are permitted to reschedule the start date of the Services one time, with at least five (5) Business Days’ prior written notice, without Your incurring additional fees. If You request any additional or alternative rescheduling, suspension, or delays, and We agree to such request, You will pay an additional fee equal to twenty-five percent (25%) of the applicable fees in each instance when We accommodate the rescheduled or delayed Services.

2. ACCESS

As applicable to the Services to be performed, You will provide Us with sufficient, free, safe, and timely access to Your facilities, computer systems and networks to enable Our performance of the Services.

3. TERMINATION

- 3.1 **Termination for Cause.** Upon written notice to the other Party, either Party may terminate the Terms immediately for cause as provided below if:
 - (a) the other Party breaches the Terms and has failed to remedy a remediable breach within thirty (30) days of receipt of a written notice from the first Party specifying the breach and requiring it to be remedied (except for non-payment per which the cure period is ten (10) days); or
 - (b) the breach is incapable of remedy; or
 - (c) to the extent permitted under applicable law:
 - (i) the other Party or its property is subject to insolvency or receivership procedures;

- (ii) the other Party becomes insolvent or unable to pay its debts as they mature;
- (iii) the other Party makes an assignment for the benefit of creditors; or
- (iv) the other Party becomes the subject of any other proceeding under any bankruptcy, insolvency, or debtor's relief law.

- 3.2 **Suspension of Performance.** We may immediately suspend performance under the Terms if You, in Our reasonable opinion, fail to comply with the Terms.
- 3.3 **Effect of Termination.** Other than in instances where You terminate these Terms for cause, all Orders for Services that We have accepted before these Terms are terminated will remain effective, due, and payable in accordance with the relevant SOW or Order, regardless of whether the Services have been performed.

4. INSURANCE

Each Party must maintain insurance with coverage at least equal to what a prudent company would carry under similar circumstances or as required by law and will provide details of its insurance coverage upon request.

5. PAYMENT

- 5.1 If You purchase the Services through an Authorized Partner, the payment and tax obligations will be exclusively as between You and the Authorized Partner, and the conditions in Sections 6.1 and 6.2 below ("**Taxes**") will not apply as between You and Us.
- 5.2 If You are purchasing the Services directly from Us, You will pay Us all fees within thirty (30) days of the invoice date without any right to offset, counterclaim, holdback, or deduction. We reserve the right to charge interest for late payments on the unpaid amounts calculated at the lesser of (a) 1.5% interest per month; or (b) the highest interest rate allowed by relevant law, accrued, and compounded from the date due until payment is received by Us.

6. TAXES

- 6.1 **Transaction Taxes.**
- (a) If You purchase the Services directly from Us, You will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by You under these Terms ("**Transaction Taxes**").
 - (b) We will separately state on Our invoices the Transaction Taxes that We are required to collect from You under applicable law. You will provide proof of any exemption from Transaction Taxes to Us at least fifteen (15) Business Days before the invoice payment due date.
 - (c) If We do not collect the required Transaction Taxes from You but are subsequently required to remit the Transaction Taxes to any taxing authority, You will promptly reimburse Us for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to Our fault.
- 6.2 **Withholding Taxes.**
- (a) All payments due from You will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority.

- (b) If You are required by applicable law to deduct or withhold income taxes from amounts payable to Us under these Terms (“**Withholding Taxes**”), You will remit, and provide Us with evidence that You have remitted, the Withholding Taxes to the appropriate taxing authority and pay to Us the remaining net amount.
- (c) You will provide Us with written notice of Your intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under these Terms or any SOW and will cooperate with We to reduce any Withholding Taxes.
- (d) If We provide You with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then You will apply the lower rate.

6.3 **Income Taxes.** Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

7. CONFIDENTIALITY

- 7.1 Each Party acknowledges that it may have access to Confidential Information of the other Party in connection with the Terms, and that each Party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of these Terms.
- 7.2 **Confidential Information** means any information (regardless of the form of disclosure or the medium used to store or represent it) of a Party (**Disclosing Party**), including trade secrets and technical, financial, or business information, data, ideas, concepts, or know-how, that:
- (a) is designated as “*confidential*” or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
 - (b) the receiving Party (**Recipient**) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

- (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
- (b) is received from a third-party without restrictions on its use or disclosure and not by in advertence, mistake, or violation of other confidentiality obligations;
- (c) is or has become disseminated to the public through no fault of the Recipient and without violation of the Terms or other obligation to maintain confidentiality; or
- (d) is created independently by the Recipient without breach of the Terms, including any obligation of confidentiality owed to the Disclosing Party.

In addition to the above, the Services and associated fees are deemed Confidential Information.

- 7.3 Each Recipient of Confidential Information under these Terms must:
- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
 - (b) not use the Disclosing Party's Confidential Information in any way for its own account or the

account of any third-party except to perform its duties, exercise its rights or is otherwise authorized under the Terms; and

- (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under the Terms or as otherwise authorized under, provided that:
 - (i) any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
 - (ii) the Recipient's employees, contractors, or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.

7.4 Notwithstanding the restrictions set out above, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
- (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
- (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

7.5 You will immediately notify Us if Confidential Information is used or disclosed in breach of the Terms. As monetary damages may not be sufficient relief if anyone violates or threatens to violate the conditions of this section, either Party is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other legal or equitable rights or remedies it may have.

7.6 Upon the Disclosing Party's request and upon termination of the Terms (unless agreed otherwise by the Parties at the time), each Party will return, destroy, or delete permanently (at the Disclosing Party's election) the other Party's Confidential Information.

7.7 On termination of these Terms, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.

7.8 **Feedback.** You agree that We have the unrestricted right to use suggestions and feedback that You provide to Us regarding Our Services and products, without notice or payment to You, or Your consent, and that such suggestions and feedback will be Our Confidential Information.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 As between the Parties, (a) You own all rights, title, and interest in and to any proprietary information, materials, or other items You provide to Us under an applicable SOW ("Customer IP") and all Intellectual Property Rights therein; and (b) We own all rights, title, and interest in and to all Company Materials and Deliverables, including all Intellectual Property Rights therein.

8.2 The Services will not be interpreted as a "*work for hire*." You may not exercise any rights, title, and interest in and to the Services, Company Materials, Deliverables, or any related Intellectual Property

Rights, except for the limited usage rights granted to You in these Terms.

8.3 Subject to these terms and conditions, including the payment of fees:

- (a) We grant to You a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to use and reproduce, for Your own internal business operations, the Deliverables (and any Company Materials solely as provided by Us as part of the Deliverables); and
- (b) You grant to Us a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of any applicable SOW, to use, reproduce, and distribute to Our Representatives, Customer IP to perform the Services and provide the Deliverables to You under these Terms.

9. LIMITED WARRANTY

- 9.1 We warrant that the Services will be performed in a professional and workmanlike manner (“**Services Warranty**”). If You believe that We have breached this Service Warranty, You must notify Us in writing and in sufficient detail of the breach within thirty (30) days after We have provided the non-conforming Services. We will, at Our option, either (a) re-perform the Services at no additional cost to You or (b) credit You (or if the Services were purchased via an Authorized Partner, the Authorized Partner who paid Us) the service fees associated with the non-conforming Services. This section states Your sole and exclusive remedy, and Our sole and exclusive liability, with respect to any breach of Service Warranty.
- 9.2 **Disclaimer of Warranties.** EXCEPT FOR THE SERVICES WARRANTY SET FORTH IN SECTION 9.1, THE SERVICES ARE PROVIDED “AS IS,” AND TO THE EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICES, INCLUDING QUALITY, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE SERVICES OR DELIVERABLES; OR THAT WE WILL FIND ANY AND ALL VULNERABILITIES, OR THAT THE SERVICES WILL RENDER YOUR NETWORK AND SYSTEMS SAFE FROM MALICIOUS CODE, INTRUSIONS, OR OTHER SECURITY BREACHES.

10. LIMITATION OF LIABILITY

- 10.1 **LIMITATION ON DIRECT DAMAGES.** EACH PARTY’S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THESE TERMS WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID OR PAYABLE TO US FOR THE SERVICES FROM WHICH THE CLAIM AROSE. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE.
- 10.2 **CONSEQUENTIAL DAMAGES WAIVER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR LOSS OF PROFITS, LOSS OF GOODWILL, COSTS OF OBTAINING SUBSTITUTE PRODUCTS OR SERVICES,

BUSINESS OR SYSTEM INTERRUPTION, OR ANY LOST OR DAMAGED DATA OR SYSTEMS, OR ANY DAMAGES RELATING TO CLAIMS THAT THE PRODUCTS, SERVICES OR DELIVERABLES DID NOT OPERATE INTERRUPTION- OR ERROR-FREE) UNDER THESE TERMS, EVEN IF THE DAMAGES WERE FORSEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE.

- 10.3 **LIMITATION OF LIABILITY EXCLUSIONS.** THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 WILL NOT APPLY TO: (A) CUSTOMER'S VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR YOUR USE OF DELIVERABLES IN A MANNER NOT EXPRESSLY AUTHORIZED BY US IN A SOW; (B) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 11; (C) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN SECTION 7; YOUR PAYMENT OBLIGATIONS UNDER A SOW; (D) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; OR (E) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

11. INDEMNIFICATION

11.1 Company's Obligations.

- (a) **Defense and Indemnification.** Subject to Sections 11.3 and 11.4 below, We will defend You against third-party claims that the Deliverables infringe any patent, trademark or copyright of a third-party, or misappropriate a trade secret (but only to the extent that the misappropriation is not a result of Your actions), under the laws of the United States, Canada, the European Economic Area, Australia, New Zealand or Japan, to the extent that the Services are used in such countries ("**Infringement Claim**"), and indemnify You from the resulting costs and damages finally awarded against You to a third-party by a court of competent jurisdiction or agreed upon in a final settlement.
- (b) **Remedies.** If the alleged infringing Deliverables become, or in Our opinion are likely to become, the subject of an Infringement Claim, We will, at Our option and expense: (i) procure for You the right to continue using the Deliverables; (ii) replace or modify the affected Deliverables so that they are non-infringing; or (iii) terminate Your license to the affected Deliverables and upon Our receipt of Your written confirmation that You have removed or destroyed the affected Deliverables, We will issue You a credit of the fees paid for the affected Deliverables, pro-rated on a three year, straight-line basis. Nothing in this Section 11.1(b) limits Our obligation under Section 11.1(a) to defend and indemnify You, provided that You replace the alleged infringing Deliverables upon Our making alternative Deliverables available to You or You discontinue using the alleged infringing Deliverables upon receiving notice from Us.
- (c) **Exclusions.** Notwithstanding the foregoing, We will have no obligation with respect to any claim based on:
 - (i) a combination of the Deliverables with any third-party products that We do not provide and that are not listed on Our commercial price list;
 - (ii) use of the Deliverables for a purpose or in a manner for which the Deliverables were not designed;
 - (iii) any modification to the Deliverables without Our express written approval;

- (iv) any Deliverables We provide in accordance with Your specifications or designs;
 - (v) any claim that relates to open-source software or freeware technology or any derivatives or other adaptations that We do not embed into Our products listed on Our commercial price list or into the Deliverables; or
 - (vi) the continued use of the Deliverable after being notified of the Infringement Claim or after being provided a modified version by Us at no additional cost that is intended to address such alleged infringement.
- 11.2 **Customer Obligations.** Unless prohibited by sovereign immunity or subject to Sections 11.3 and 11.4, You will indemnify and defend Us against any claims, liabilities and expenses (including court costs and reasonable attorney fees) that We incur as a result of or in connection with any third-party claims arising from: (i) Your failure to obtain any consent, authorization or license required for Our use of data, software, materials, systems, networks or other technology provided by You under these Terms; or (ii) Our compliance with any technology, designs, instructions or requirements provided by You or a third-party on Your behalf.
- 11.3 **Indemnification Procedure.** The obligations in this Section 11 are applicable only if the indemnified Party (“**Indemnatee**”):
 - (a) provides prompt written notice to the indemnifying Party (“**Indemnitor**”) of the claim;
 - (b) reasonably cooperates in response to the Indemnitor’s request for assistance, in connection with the defense or settlement of the claim;
 - (c) give the Indemnitor sole control over the defense and settlement of the claim, provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnatee; and
 - (d) is not in material breach of these Terms (and any applicable SOW).
- 11.4 **EXCLUSIVE INDEMNITY.** THE TERMS IN THIS SECTION 11 REFLECT EACH PARTY’S ENTIRE OBLIGATIONS, AND EACH PARTY’S SOLE AND EXCLUSIVE REMEDY FOR THIRD-PARTY CLAIMS INVOLVING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE OBLIGATIONS SET FORTH IN THIS SECTION 11 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THESE TERMS.

12. PRIVACY AND USE OF DATA

- 12.1 Each Party shall comply with applicable laws governing the collection, use and disclosure of Personal Data and must obtain consents required with respect to the handling of Personal Data.
- 12.2 Unless a specific agreement has been executed between the Parties, by agreeing to a SOW or submitting an Order, Our Data Processing Agreement (“**DPA**”) shall be deemed incorporated into these Terms. In the event of any conflict between the terms of the DPA and this Agreement, the terms of the DPA will take precedence.
- 12.3 You grant to Us a non-exclusive, perpetual right and license to use, reproduce and disclose Threat Data and deidentified material for improvement of products and services; research to enhance understanding of Malware, threats, and vulnerabilities; and to improve overall security. This includes without limitation compiling statistical and performance information and making such information publicly available. We retain all rights in Threat Data and aggregated and anonymous data.
- 12.4 The Services may employ applications and tools to collect Customer Data. Such collection of

Customer Data may be necessary to provide Customer with the relevant Services. You may be required to uninstall, disable or cease using Services to stop further Customer Data collection.

- 12.5 You will, in Your use of the Services and Deliverables, comply with Your obligations under privacy regulations in respect of Your processing of Personal Data and any processing instructions You issue to Us. You represent that You have all rights, permissions, and authorizations necessary for Us to process Your Personal Data under this Agreement. You agree that these Terms are a complete and final instruction to Us in relation to the processing of Personal Data.

13. COMPLIANCE WITH EXPORT LAWS

- 13.1 Each Party will comply with the applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations.
- 13.2 You will not, directly or indirectly, export, transmit, permit access or use any Services or technical data (or any part of Services or technical data) or system or service incorporating any Services to or in any country to which export, transmission or access is restricted by regulation, statute, or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other competent governmental entity that may have jurisdiction over export or transmission. You will not use, transfer, or access any Services for end use relating to any nuclear, chemical, or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.
- 13.3 You acknowledge and agree that certain Services containing encryption may require authorization from the U.S. and other competent authorities including the European Union, prior to export. You also acknowledge and agree that certain Services containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Services may be found on Our “[Export Compliance](https://www.trellix.com/en-us/about/export-compliance.html)” webpage located at <https://www.trellix.com/en-us/about/export-compliance.html>, as updated from time to time.
- 13.4 If We receive notice that You are or become identified as a sanctioned or restricted party under applicable law, We will not be obligated to perform any of Our obligations under these Terms (and applicable SOWs/Service Orders) if such performance would result in violation of the sanctions or restrictions.

14. COMPLIANCE WITH ANTI-CORRUPTION LAWS

- 14.1 Each Party agrees to comply with all applicable country, federal, state, and local anti-bribery, and anti-corruption laws, including, but not limited to, the U.S. Foreign Corrupt Practices Act (“FCPA”), the U.K. Bribery Act, and other applicable anti-corruption laws (“**Anti-Corruption Laws**”).
- 14.2 Each Party represents and warrants that:
- (a) neither it, nor anyone acting on its behalf, has violated or will violate the Anti-Corruption Laws in connection with these Terms;
 - (b) it has not and will not, directly or indirectly, offer, promise, authorize, solicit, pay, or give *anything of value* to any Government Official to:
 - (i) influence an act or decision of the Government Official in his or her official capacity;
 - (ii) induce the Government Official to do or omit to do any act in violation of the lawful duty of such official;

- (iii) secure an improper advantage; or
 - (iv) induce the Government Official to use his or her influence to affect or influence any act or decision of a government or instrumentality, in each case in order to assist Company or any of Our Affiliates in obtaining or retaining business; and
 - (v) none of its employees, directors, owners, officers, or principals, or any immediate family member of a director, owner, officer, or principal, is a Government Official with influence over these Terms.
- 14.3 In addition, each Party shall properly and accurately record all transactions related to these Terms in its books and records, including amounts, purpose, and recipient, all of which each Party shall maintain with supporting documentation.
- 14.4 If We have reasonable basis to believe that a breach of the obligations set forth in this Section 14 has occurred, or may occur, We may, without limitation to other rights and remedies (a) withhold further Services until such time as We have received confirmation to Our satisfaction that no breach has or will occur or (b) terminate these Terms in accordance with the termination terms herein.
- 14.5 Upon Our request, You agree to provide Us with anti-corruption/anti-bribery/FCPA certifications.

15. TRAINING SERVICES

Additional terms pertaining to Our Training Services are set forth in *Attachment 2* to this Agreement.

16. GENERAL PROVISIONS

- 16.1 **Relationship.** The Parties are independent contractors and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary, or other special relationship. Neither Party intends for these Terms to benefit or create any right or cause of action in or on behalf of, any person or entity other than the Parties and listed Affiliates. These Terms are not intended to create a third-party beneficiary of any kind. You must not represent to any third-party that it has any right to bind Us in any manner and You will not make any representations or warranties on Our behalf.
- 16.2 **Severability.** If a court holds that any provision of these Terms as invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision. The change will affect neither the validity of the amended provision nor the validity of any other provision of the Terms, which will continue in full force and effect.
- 16.3 **No Waiver.** A Party's failure or delay in enforcing any provision of the Terms will not operate as a waiver of the right to enforce that provision or any other provision at any time. A waiver of any provision of the Terms must be in writing, specify the provision to be waived and signed by the Party agreeing to the waiver.
- 16.4 **Force Majeure.** No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of these Terms to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes, or other labor disputes, riots, or other acts of civil disorder, embargoes, epidemics, pandemics, or other causes beyond the performing Party's reasonable control.
- 16.5 **Governing Law.** All disputes arising out of or relating to these Terms, or its subject matter will be governed by the substantive laws for the Territory as specified in *Table 1* of *Attachment 1* of these Terms. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to these Terms.

- 16.6 **Jurisdiction.** The courts for the applicable Territory as specified in *Attachment 1* will each have exclusive jurisdiction over all disputes arising out of or relating to the Terms or its subject matter.
- 16.7 **Entire Agreement.** These Terms constitute the entire understanding between the Parties relating to its subject-matter and supersedes all oral or written proposals, and all communications between the Parties relating to its subject matter. The conditions of these Terms will prevail, notwithstanding any variance with any Purchase Order or other written instrument submitted by You, whether expressly rejected by Us. All pre-printed terms on Orders are expressly rejected and will not apply.
- 16.8 **Notices.** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the Party giving it, and addressed to Us, “*Attention Legal Department*”, to the applicable address listed in *Attachment 1*. We will contact You at the contact information You provide when purchasing or registering for the Cloud Services. Notices will be considered delivered when received if delivered by hand with receipt, the next business day after sending it by pre-paid, nationally recognized, overnight air courier with tracking capabilities; or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.
- 16.9 **Assignment.** We provide the Services to You for Your own internal business purposes and not for the benefit of third parties. You may not sublicense, assign, or transfer Your rights under these Terms without Our prior written consent. Any attempt by You to sublicense, assign or transfer any of Your rights, duties, or obligations under the Terms, whether directly, or indirectly by merger or acquisition, will be null and void.
- 16.10 **Survival.** The following sections, together with any other terms necessary for the interpretation or enforcement of the Terms and any SOW, will survive termination of these Terms/SOW: Sections: 3.3 (“Effect of Termination”), 5 (“Payment”), 6 (“Taxes”), 7 (“Confidentiality”), 8 (“Intellectual Property Rights”), 9 (“Warranties, Exclusions, Disclaimers”), 10 (“Limitation of Liability”), 11 (“Indemnification”) and 16 (“General”).

-Attachment 1 follows this page-

ATTACHMENT 1 - Definitions

Capitalized terms used in these Terms have the following meaning:

Affiliate as used herein, means any entity that Controls, is Controlled by, is under common Control with a Party, or is Controlled by the same parent entity as a Party, where “Control” or “Controlled” means direct or indirect ownership, through one or more intermediaries of more than 50% of an entity’s voting capital or other voting rights.

Authorized Partner means any of Our distributors, resellers or other business partners who are authorized by Us in writing to sell Services.

Business Day means any day other than a Saturday, Sunday, statutory or public holiday in the place where the Services are performed.

Company means one of the legal entities listed in *Table 1* below who is identified on the Service Order or who has executed a SOW for the Services:

Company Materials means all Intellectual Property Rights that are:

- (a) owned or licensed by Us or Our third-party licensors prior to performing the Services;
- (b) developed, acquired, conceived, or reduced to practice by Us or Our agents during the provision of the Services, and
- (c) modifications, enhancements, and Derivative Works of the Intellectual Property Rights referred to in (a) and (b) above.

Company Privacy Notice refers to Our Privacy Notice, available at <https://www.trellix.com/en-us/about/legal/privacy.html>.

Customer means the entity to whom the Services are to be provided by Us. For avoidance of doubt, “Customer” does not mean an individual consumer.

Customer Data means Your Personal Data, sensitive data or other information about You, Your personnel and other users of the Services (including their name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (including information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, products installed, components, processes and services information, frequency and details of update of components, information about third-party products installed, extracts of logs created by Us, usage patterns of Our products and specific features, etc.

Data Processing Agreement or DPA means the Our Data Processing Agreement with Customers posted at <https://www.trellix.com/en-us/assets/legal/customer-data-processing-agreement.pdf>.

Deliverables means any reports, analyses, or other tangible or intangible materials or work product that We deliver to You, as set forth in a SOW and/or Order.

Derivative Works means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed, or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

Effective Date means the date of the last signature of a SOW or the date of Our acceptance of an Order.

Government Official means any officer, employee or person acting in an official capacity for any government department, agency, or instrumentality, including state-owned or -controlled companies, and public international organizations, as well as a political party or political party official or candidate for political office.

Intellectual Property Rights means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including: (a) copyright, trademark and patent rights, trade secrets, moral rights, right of publicity, authors’ rights; (b) any application or right to apply for any of the rights referred to in paragraph (a); and (c) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in paragraphs (a) and (b).

Malware means applications, executable code, or malicious content that We consider to be harmful.

Personal Data means any information relating directly or indirectly to an identified or identifiable individual.

Representative means a Party’s Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

Service Order or Order means a purchase order for Services from You to Us or an Authorized Partner, as applicable.

Service Order Date means the date when We accept an order for Services.

Table 1

Territory: For Services in the following Regions/Country:	Legal Entity	Business Address For Notice	Choice of Law and Venue
United States, Canada, Mexico, Central America, South America, and the Caribbean	Musarubra US LLC	6000 Headquarters Drive, Suite 600, Plano, TX 75024, USA	California Law/ The state courts in Santa Clara County or the federal courts in the Northern District of California
All countries in Europe, the Middle East and Africa (EMEA)	Musarubra Ireland Limited	Building 2000, City Gate, Mahon, Cork, Ireland	The laws of the Republic of Ireland/ Courts of the Republic of Ireland
Japan	Musarubra Japan KK	Shibuya Mark City West, 1-12-1 Dogenzaka, Chibuyaku, Tokyo 150-0043	The laws of Japan/ Courts in Tokyo District Court of Japan
Asia Pacific region, but excluding Japan, China, and Australia	Musarubra Singapore Pte Ltd	238A Thomson Road, #12-01/05 Novena Square, Tower A, Singapore, 307684	The laws of the Republic of Singapore/ The courts of the Republic of Singapore

Territory: For Services in the following Regions/Country:	Legal Entity	Business Address For Notice	Choice of Law and Venue
China	Trellix (Beijing) Security Software Co., Ltd	Beijing Diplomatic Centre, 17/F, Tower D1, DRC Diplomatic office Building, No.19 Dongfangdong Road, Chaoyang District, Beijing 10016	The laws of the Republic of Singapore/ The courts of the Republic of Singapore
Australia	Musarubra Australia Pty Ltd	Level 14, 80 Pacific Highway, North Sydney NSW 2060, Australia	The laws of New South Wales, Courts of New South Wales, Australia
Sales to the U.S. Government and to state/local governments and government healthcare companies in the United States	Trellix Public Sector LLC	1640 Boro Place, 3rd Floor McLean, Virginia 22102, USA	California law/ The state courts in Santa Clara County or the federal courts in the Northern District of California

Services means the professional services to be provided by Us to You under these Terms, including any Deliverables, and as described in an applicable SOW or Order.

Statement of Work or SOW means a written statement of work entered into from time to time by the Parties that describes the Services to be performed by Us, the Parties' respective obligations regarding those Services, and any other related and mutually agreed terms, conditions, and dependencies.

Terms means these governing terms and conditions together with any SOW or Order, as applicable.

Threat Data means non-personally identifying and non-customer identifying information about malware, threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

-Attachment 2 follows this page-

ATTACHMENT 2 – Additional Terms for Training Services

These additional terms apply to Our Training Services.

1. Scheduling and Delivery Terms.

- 1.1 You may self-enroll in Public Training as published on <https://trellix-training.netexam.com/Training/873/instructor-led-courses/Instructor-Led%20Courses>. Private Training delivery dates and location, if not remote, will be mutually agreed upon by You and Us. We will provide email confirmation of the Training Services to You prior to the start date of the training course.
- 1.2 You must complete all purchased Training Services within one (1) year of the date of Your Order; We may cancel all or a portion of the Training Services that You have not completed within the one year of your Order. We are not liable for any travel or accommodation costs You incur to attend Training Services. Training may not be recorded.
- 1.3 We will provide all Training Services in English, unless otherwise agreed by Us in writing.

2. Payment.

If You purchase Training through an Authorized Partner, Your payment obligations are exclusively between You and the Authorized Partner. If You purchase Training directly from Us, You agree to pay for the Training at least fourteen (14) days prior to the training start date. All payment obligations are non-cancelable and non-refundable subject to these Training terms. We do not provide a refund or credit Fees paid for attendees who do not attend Training or who leave before the Training has concluded.

3. Cancellations and Rescheduling.

- 3.1 **By Customer.** To avoid paying cancellation fees, You must reschedule Training Services, subject to availability and in writing, no less than two (2) weeks in advance of the scheduled start date. We will make reasonable efforts to reschedule Training and any such rescheduled Training must be held within one (1) year of the date of the Order on which the original Training was purchased.

Private Training. You will pay any expenses associated with rescheduling Private Training, including any expenses incurred by Us that include associated travel expenses and applicable costs.

Public Training. If You timely notify Us of the cancellation of a Public Training, We will issue You a credit for the amount paid for that Public Training class, which You may apply toward another Public Training class of the same duration held within one (1) year of the date of Your Order on which the cancelled Training class was included.

The following cancellation fees apply when cancellations are made *less than* fourteen (14) days prior to the scheduled training:

- (a) fifty percent (50%) of the Fee costs and one hundred percent (100%) of expenses associated with the cancellation (including any expenses incurred by Us that are associated with travel expenses and administrative costs) if We receive Your cancellation notice between seven (7) and fourteen (14) days of the Training course start date; or
- (b) the full amount of Fee costs and expenses relating to the cancelled Training course (including any expenses incurred by Us that are associated with travel expenses and administrative costs) if We receive Your cancellation notice less than seven (7) days prior to the Training course start date.

3.2 **By Company.**

We may cancel Training Services at any time for convenience. For Public Training Services, if We are unable to provide a suitable substitute training course, Our sole liability to You will be to refund the Fees paid by You. For Private Training Services, Our sole liability to You will be to reschedule Your Training Services. For the avoidance of doubt, We will not be liable for any travel or hotel costs You incur associated with a cancellation under this section.

4. **Substitution.**

4.1 At Your discretion, You may substitute Training course attendees with employees with substantially equivalent qualifications required for participation in the Training course. You must notify Us of a substitution within seven (7) days prior to a Training course. We may refuse or to limit Training Services if an attendee fails to satisfy the requirements for the relevant training course.

4.2 We may use substitute instructors, modify the Training Services content slightly and make changes to the dates and locations of scheduled Training course upon notice to You. We will make commercially reasonable efforts to provide two (2) weeks advance notice of a change.

5 **Conduct.** We may refuse, limit or cancel any Training Services if, in our reasonable judgment, a Customer attendee's actions raise any legitimate concerns regarding safety or compliance with applicable laws, including, but not limited to a display of violent, hostile, abusive or other disruptive behavior. In such case, You will not be entitled to any credits or refunds.

6 **Training Materials Warranty Disclaimer.** All Training materials and systems are provided strictly on an "as-is" basis, without warranty of any kind, whether express, implied, statutory, or otherwise, including without limitation, as to quality, reliability, timeliness, usefulness, sufficiency, and accuracy. We reserve the right to update any Training materials at any time without notice.

7 **Definitions.**

Fees. Fees described within this attachment shall be defined as the value paid for the Training Services and reflected on the Order.

Private Training. Private Training means an instructor-led training limited to one customer on mutually agreed upon scheduled dates. Private Training can be in-person at the customer site provided the customer pays for travel and expenses of Trellix.

Public Training. Public Training means an instructor-led training that is open for enrollment to any customer on prescheduled dates (by Trellix).

Training or Training Services. Training or Training Services means training in the use of Our Products or Subscriptions, or on security-related topics in general, provided by Us.

-End-