

GLOBAL PRODUCTS AGREEMENT
FOR TREND PRODUCTS

THE RIGHT TO USE TREND PRODUCTS FOR COMMERCIAL PURPOSES IS SUBJECT TO ACCEPTANCE OF THIS AGREEMENT, WHICH SHALL GOVERN COMPANY'S USE OF ALL TREND PRODUCTS ACQUIRED HEREUNDER. DIFFERENT TERMS APPLY TO TREND PRODUCTS FOR PERSONAL, HOME AND/OR CONSUMER USE. Any additional, conflicting, or different terms or conditions proposed by Company in any Company-issued document (such as an Order), are hereby expressly rejected by Trend.

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Version: **Global, except for Japan (English)**

BY (I) PLACING AN ORDER FOR A PRODUCT; AND/OR (II) USING AND CONTINUING TO USE A PRODUCT, COMPANY CONFIRMS THAT:

- (a) **IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THE AGREEMENT;**
- (b) **IT AGREES TO THE TERMS AND NO FURTHER WRITTEN APPROVAL IS NEEDED FOR THE AGREEMENT TO BE VALID AND ENFORCEABLE;**
- (c) **IT ACCEPTS THIS VERSION AND ALL FUTURE VERSIONS PUBLISHED ON TREND'S WEBSITE WITH THE UNDERSTANDING THAT THE MOST RECENT VERSION WILL ALWAYS APPLY;**
- (d) **IT CONTINUOUSLY COMPLIES WITH ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS OF THE AGREEMENT; AND**
- (e) **ITS REPRESENTATIVE IS AUTHORIZED TO ACCEPT AND LEGALLY BIND THE COMPANY TO THIS AGREEMENT.**

1. Scope of the Agreement.

1.1 **Applicability of the Agreement.** The Parties acknowledge that this Agreement is applicable to each Order of Products by Company as set forth in Section 1.4.

1.2 **Entire Agreement.** The Parties agree that this Agreement is the entire agreement between the Parties relating to the subject matter and any prior agreements, representations, statements, white papers, quotes, advertisement or usage of the trademarks or descriptions of Trend (whether oral or written) or otherwise arising from any course of dealing between the Parties that are not specifically set forth herein are all superseded by this Agreement.

1.3 **Not a Master Purchase Agreement.** Company acknowledges that this is NOT a master purchase agreement for subsequent purchases of Products, but rather, this Agreement only applies to the instant Order of Products by Company. Each subsequent Order of Products by Company will be made subject to the then-current version of this Agreement. For clarity, the version update mechanism described in (c) above applies to this instant Order.

1.4 **Procurement Under This Agreement.** Company may order Products under this Agreement by one of three methods:

- (a) **Directly from Trend.** Company may receive a Quote and place an Order directly with Trend, which Order if accepted by Trend will be governed solely by the terms set forth in this Agreement (including the Certificate). All fees and payment terms will be as set forth in a Quote and all payments for Products will be made directly to Trend.
- (b) **Indirectly via a Reseller.** Company may receive a Quote for Products from a Reseller. Based on such Quote, Orders by Company will be sent to the Reseller at such fees, discounts, and on invoice and payment terms as agreed solely between Company and Reseller. Company understands that if an Order is placed with a Reseller, the Reseller will place an order with Trend for Products through a Trend distributor, but such Order is subject to acceptance or rejection by Trend. Except for the matters described in the second sentence of this paragraph between Reseller and Company, all other terms regarding Products ordered by Company are exclusively set forth in this Agreement. All payments must be made directly to the Reseller and never to Trend. No Reseller is authorized to act on behalf of Trend.
- (c) **Indirectly via a Marketplace Provider.** Company may order certain Products that are sold on and/or hosted by a Marketplace Provider either directly or via a Reseller. As a supplier to Trend, a Marketplace Provider is acting solely as a seller of record to facilitate the purchase by Company of the right to use Products agreed hereunder and for no other purpose. As such, Company acknowledges and agrees that: (A) this Agreement is between Company and Trend and is not with the Marketplace Provider; (B) Products are designed, tested, updated, supported, and hosted by and/or on behalf of Trend as owner of each Product and Trend (and not Marketplace Provider) shall be solely responsible/liable to Company with respect to the Products on the terms and subject to this Agreement; (C) Marketplace Provider has no obligation to (i) furnish a Product to Company, (ii) furnish any maintenance/support services for any Product to Company, or (iii) otherwise handle any warranty claim, complaint or otherwise address or resolve any claim or dispute of any kind or nature that Company may have under this Agreement; and (D) it shall not assert, make, or file any claim, demand, or cause of action against any Marketplace Provider with respect to this Agreement, regardless of reason.

1.5 **Definitions.** In addition to the capitalized definitions and descriptions that may be set forth elsewhere in this Agreement, the following terms shall have the following meanings and all such definitions shall be equally applicable to the singular, plural, and derivative forms:

"Administrator" means one or more Company employees authorized to manage the Product on behalf of Company. Each Administrator will have the ability to, among other things, develop company's configuration, maintain, set rules and policies for, manage Company's access to, view alerts and events generated by, and/or provide technical support for, all or part of Product as determined by Company from time-to-time.

"Affiliate" means as to a Party, each person that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. **"Control"** means the direct or indirect ownership of more than 50% of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party the status of any or all Affiliates.

"Agreement" means this agreement (including all referenced terms related to Maintenance, Hardware, PSP, Professional Services and Documentation), its Schedule(s), Data Processing Addendum, and the Certificate, which forms the entire agreement between Trend and Company with respect to each Product that is purchased hereunder.

"Applicable Law" means all mandatory national, federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters, and other official releases in the territory that are applicable from time-to-time to a Party's performance of its obligations and/or exercise of its rights hereunder, including, but not limited to, data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

"Capacity" means the use rights purchased for Software and/or the usage capacity and/or the Credits purchased for Products (excluding Professional Services) based upon the applicable licensing measurement as described in the Certificate. If Company exceeds the Capacity (if any), then Company is responsible for promptly purchasing an additional quantity to true-up for such excess. Company acknowledges and agrees that it is obliged to pay Trend excess use fees at the

rates prescribed in the Quote or Private Offer upon request.

"Certificate" means a written confirmation issued by Trend on the basis of an Order placed either by a direct or indirect (Reseller or Marketplace Provider) procurement method defined in [Section 1.4](#) that confirms the Products ordered by Company, including the Capacity (if any). Company is advised to retain the Certificate as proof of its entitlement to such Product(s). In some regions, the Certificate is sometimes referred to as a [Certificate](#) or an [Entitlement Certificate](#) or an [Order Acceptance](#).

"Cloud Service(s)" means any Trend-branded cloud security service (including any enabling Software and any infrastructure/platform forming a part thereof that is hosted by or on behalf of Trend) and related Maintenance.

"Company" is the corporation, company, or other legal entity (either public or private) listed on the Certificate. In the event of conflict between an Order and a Certificate, the Certificate shall control.

"Company Data" means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to the Product environment provided hereunder; and/or (b) otherwise supplied to Trend in the course of the Company's use or receipt of Products. Company owns all rights, title and interest in and to Company Data.

"Confidential Information" shall mean information in any form disclosed by a Party or its Representatives to the other Party and/or that Party's Representatives (i) which is marked as 'confidential', or (ii) that under the circumstances by its nature would be understood to be confidential and/or proprietary information by a reasonable person. For the avoidance of doubt, information relating to Trend's business, technology, and/or products is Confidential Information. "Representatives" means employees, officers, contractors, subcontractors, agents, representatives and advisers of a Party and their Affiliates and their Representatives.

"Contractor" is an independent third party that provides services in support of Company and/or its Affiliates with respect to any Product provided hereunder.

"Credits" shall mean the universal licensing unit for obtaining access to Products made available on the Trend Vision One platform. Credits are purchased upfront, enabled and automatically used by solutions or packages, and expire at the end of the Subscription Period.

"Cyberthreat Data" means any malware, spyware, virus, worm, Trojan horse, ransomware, or other potentially malicious or harmful code or files as well as URLs, DNS data, network telemetry, commands, executable binary files, macros, scripts, processes or techniques, metadata, or other information or data associated with the foregoing, that may be related to unauthorized intrusions or attacks by third parties associated therewith and that: (a) Company provides to Trend in connection with this Agreement; or (b) is accessed, collected, or discovered by Trend during the course of providing any Product, excluding any such information or data that identifies Company or to the extent that it includes Personal Data. Cyberthreat Data is not Confidential Information or Company Data.

"Data Processing Addendum" means Trend's Data Processing Addendum at trendmicro.com/dpa that is applicable if and to the extent Trend acts as a 'processor' or 'sub-processor' (as defined in the GDPR) for Personal Data of Company.

"Delivery Date," "Delivered," and "Delivery" means: (a) for [Software](#), the date that Software is made available by Trend for download by Company, and/or (b) for [Hardware](#), the date of actual shipment to Company, or such other delivery date as notified by Trend. All on premise Products and their Maintenance will be deemed for all purposes to be Delivered in the country of Trend's place of business stated in the applicable Certificate.

"Documentation" means the printed, electronic, and/or online service descriptions, technical documentation, operating instructions and requirements available for Products. Company understands and agrees that the Documentation may be revised from time-to-time by Trend at its discretion, for among other reasons, changes or improvements to, or new versions of, a Product, without the need to amend this Agreement, and in each such event, such revised Documentation will supersede all prior Documentation with respect to subsequent use of such Product.

"End User" means any individual, entity, or person (directly or indirectly through another user) that: (a) uses a Product for Company's (or an Affiliate's) benefit in accordance with this Agreement such as Company's Administrator(s), technical/support resources, or employees/Contractors whose use is in furtherance of Company's or an Affiliate's Internal Business Use; or (b) otherwise uses a Product.

"Escalated Issue" means with respect to code-level errors/bugs in licensed Software, a request from Company for Maintenance under [Section 2.1.2\(b\)](#) of the Maintenance Terms resulting from Company suspecting or asserting in accordance herewith, that such licensed Software no longer performs in accordance with its Documentation in any material respect.

"Free Product" shall have the meaning set forth in [Section 2.7](#).

"Hardware" means a hardware product that Software is embedded in or preloaded by Trend.

"Hardware Terms" shall have the meaning set forth in [Section 2.4](#).

"High-Risk Environment" means a device, situation, environment, network, or system requiring safety design, features, and/or functionality for fail-safe or fault-tolerant operation or execution to maintain safe and secure performance in an environment where a failure could lead (directly or indirectly) to bodily injury, death, physical property damage, and/or environmental damage. High-Risk Environments may include, but are not limited to: (a) the design, construction, operation, or maintenance of any nuclear facility, civil infrastructure such as power plants and waterworks, manufacturing facilities, and/or industrial plants such as chemical refineries; (b) navigation, communications, or operating systems in aircraft, ships, trains, and other modes of transportation; (c) air traffic control systems; (d) weapons systems (nuclear or otherwise); (e) operation of life-support or life-critical medical equipment or other equipment or systems affecting a patient's health or well-being; or (f) any other device, environment, network, or system in which the unavailability, inaccuracy, circumvention, ineffectiveness, or failure of the Product could lead or contribute to bodily injury, death, physical property damage, and/or environmental damage.

"Internal Business Use" means the internal business use of Products solely by and for the direct benefit of Company specifically in connection with the security, protection, and/or integrity of Company's systems, networks, devices, documents, emails, and/or other Company Data.

"IP Claim" means any suit, cause of action, or other legal proceeding brought against Company by a third party in the courts of law, equity, or otherwise, that asserts that Company's use of a Product (or component parts thereof, but not Open Source Software, Test Products or Free Products) provided hereunder

directly infringes any intellectual property right of such third party or makes unlawful use of a trade secret of such third party.

“Maintenance” shall have the meaning set forth in the terms posted at <https://success.trendmicro.com/en-US/solution/KA-0007548> (“Maintenance Terms”). For Hardware, any maintenance or support services shall have the meaning as set forth in the applicable Hardware Terms.

“Marketplace Provider” means an entity that hosts an online marketplace or store that offers for sale products by separate agreement and a separately stated fee with customers (such as Company).

“New Versions” means the release by Trend of a new version of an existing Product that contain (in Trend’s determination) significant new features, improvements, capabilities, structures, and/or functionality that Trend makes available to existing customers of such Products as an upgrade or conversion for new consideration, it being understood that each New Version acquired by Company replaces the prior version that must be uninstalled. Such New Versions are generally identified by Trend by a change to the version number to the left of the decimal point (e.g., version 3.x to be replaced by version 4.x).

“Open Source Software” means: (a) each and every third party software component that is distributed under a license agreement approved by the Open Source Initiative or similar open source or freeware license (and not this Agreement); and (b) is included in a Product by Trend. Open Source Software includes any of the following Open Source Initiative-approved license agreements: (i) GNU’s General Public License (GPL), Lesser/Library GPL (LGPL), and GNU Affero Public License; (ii) The Artistic License (i.e., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Berkeley software design (BSD license including Free BSD or BSD-style license); (vi) the Sun Community Source License (SCSL); (vii) an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces); (viii) the Apache Server license; or (ix) the MIT License. For the purposes of this definition, “Open Source Initiative” means the initiative as detailed at: <https://opensource.org>.

“Optional Features” means capabilities, features, and functionality in a Product that Company may elect to opt-in or out of. The right to opt-in or out is described in Documentation. Optional Features when activated may permit a Product to: (a) provide the defined capabilities, features, and functionality thereof as described in the Documentation; and/or (b) provide the most effective, up-to-the-minute threat protection and features to detect or prevent the latest malicious behavior and potentially fraudulent websites, internet security risks, and/or Cyberthreat Data; and/or process certain Company Data (including Personal Data).

“Order” means a purchase order or other ordering document issued by Company to order Products. All such Orders are Company’s irrevocable commitment to purchase and pay for the Products stated in the Order and are subject to direct or indirect acceptance by Trend via the Reseller or the Marketplace Provider at their sole discretion, which acceptance may be signified by Trend’s issuance of a Certificate to Company.

“Party” means only each of Company and Trend, and together, they are collectively the only **“Parties.”** All other persons are third parties.

“Perpetual Period” means with respect to a license granted for Software that extends for an indefinite period of time, subject to earlier termination in accordance herewith.

“Personal Data” shall have the same meaning as set forth in the Data Processing Addendum.

“Private Offer” shall mean the pricing and usage model and associated documentation for orders via a Marketplace Provider issued by Trend for acceptance by Company or its Reseller. If the Private Offer includes Capacity and/or permits Company to exceed the Capacity, then Company agrees to pay for any excess usage in accordance with the terms of such Private Offer and the Marketplace Provider’s terms and policies as applicable. In the event there is no Capacity and the Private Offer is on a consumption basis, then Company agrees to pay for all Products consumed. In the event of a conflict between the Private Offer and this Agreement, the Private Offer will prevail.

“Products” means and includes any Software, Hardware, Services and/or Maintenance that are ordered under this Agreement (but never technical services described in a Professional Services SOW) as set out in the relevant Certificate during the Term. Products are sometimes referred to as “Solutions” in the Quote and other Documentation.

“Professional Services” means a professional services engagement by Trend personnel on a separate fee-based arrangement.

“Professional Services SOW” means a separate statement of work for a Professional Services engagement that may be entered into with Company by either Trend or a third party.

“PSP” means the premium support program provided by Trend to Company under the PSP Terms as may be updated from time-to-time. The relevant PSP Terms shall be provided directly to Company as and when applicable to any Order.

“Quote(s)” means one or more documents issued by Trend, a Reseller or a Marketplace Provider (as the case may be) to Company specifying the Product, the related pricing, payment terms, Capacity (if any) and/or other information sufficient to complete the transaction. Each Quote shall incorporate this Agreement (specifically, by reference, and/or publication on Trend’s website) as the sole basis and governing document for any Orders by Company based on the Quote.

“Reseller” means a reseller or other channel partner that is authorized by Trend or its distributor to secure Orders for the sale of Products.

“Services” means any Trend-branded service offerings (including Cloud Services, Professional Services, as well as managed detection and response cyber security services).

“Service Levels” means the service levels for Products that are detailed in separate agreements and that may be published by Trend from time-to-time.

“Software” means the object code version of any Trend-published or branded application (including embedded, integrated and enabling Software) that is made available to Company for on premise use. Software includes all Documentation and Updates made available to Company. In no event or circumstance will a source code version of Software be offered, licensed, or otherwise provided hereunder to Company, nor placed in escrow.

“Subscription Period” means the limited period (such as per host hour, month, or year, but never for a Perpetual Period) for which Company has the right to use and/or receive Products (except for Hardware) provided hereunder. The Subscription Period is as stated in the Certificate or the Private Offer, as the case may be.

"Term" is described in [Section 9](#).

"Test Product" shall have the meaning set forth in [Section 2.6](#).

"Trend Competitor" means a person or entity in the business of developing, distributing, or commercializing Internet security products or services substantially similar to or competing with Trend's Products.

"Updates" shall have the meaning set forth in the Maintenance Terms.

2. Grant of Rights.

2.1 Grant. Subject to Company's continuous compliance with this Agreement (including all payment obligations), Trend hereby grants to Company a non-exclusive, non-transferable (except where Applicable Law prevents such limitation), non-assignable, terminable (in accordance herewith or Applicable Laws):

- a) limited right for End Users to access and use a Product for the Capacity;
- b) license to install and for End Users to use any Software on equipment owned, controlled, or operated by or on behalf of Company including BYOL; and
- c) right to reproduce, without additional cost, a commercially reasonable number of copies of Software (in an unmodified form) and their Documentation for training, back-up, archival and disaster recovery purposes only, provided that Company reproduces on or in such copies all of the copyright notices and other proprietary legends that appear on the original copy of such Software.

In all cases, use by Company and its End Users shall be strictly in accordance with the applicable Documentation and only for Internal Business Use. Company agrees to ensure its End Users will comply with this Agreement. For Test Products and Free Products, this Section applies only to the extent not modified by [Sections 2.6 and 2.7](#).

2.2 Affiliate, Contractor Use and Bring Your Own License ("BYOL"). Trend grants Company the right to authorize and permit (for no additional fees or amounts due to Trend) for Internal Business Use: (a) Company's Affiliates to use Products for so long as such entity remains an Affiliate; and (b) Contractors to use Products only in connection with the provision of business process support, technical support, hosting services, and/or outsourcing services to and solely for the use and benefit of Company and/or Affiliates provided that such use is not for the benefit of any third party or such Contractor; and (c) BYOL hosted environments for Company. Each Affiliate, Contractor and/or BYOL using any Product will be considered an End User with respect to such Product and NOT having any rights or deemed to be a third-party beneficiary hereunder in any event or circumstance. Company agrees to conclude a written agreement with any Contractor that mandates full compliance with this Agreement. Company agrees to be legally and financially responsible to Trend for all acts and omissions of its Affiliates and Contractors in exercising the rights described in this [Section 2.2](#). For clarity, Trend provides all Maintenance directly to the contracting Company. Affiliates and/or Contractors are not entitled to contact Trend directly for Maintenance. All support requests must be coordinated and submitted through the Company to ensure streamlined service and accountability.

2.3 Use Restrictions. For clarity, the restrictions in this Section 2.3 apply to all Products (including Test Products and Free Products). Except as expressly permitted under this Agreement (including the Documentation), Company shall not, and shall not authorize, encourage, or permit End Users to:

- a) license, sublicense, sell, resell, loan, rent, lease, transfer, assign, distribute, or provide the benefit of any Product (or any portion thereof) to any third party except as specifically set forth in [Section 2.2](#);
- b) use a Product to provide services to a third party, including: (i) as a paid or unpaid service bureau; (ii) on a time-share basis; or (iii) in any other commercial exploitation not expressly permitted under [Section 2.2](#);
- c) use any Product (including Open Source Software), or any of its components, files, modules, or related licensed materials, in any manner not expressly permitted under the Agreement, including any use outside of Internal Business Use or separate from the Product with which they were provided;
- d) interfere with, or attempt to interfere with, the integrity, access controls, or usage metering of any Product, including by: (i) disabling, tampering with, or circumventing billing mechanisms; (ii) avoiding fees, including those applicable to exceeding permitted Capacity (if any); (iii) gaining unauthorized access; or (iv) probing, scanning, testing, or breaching security or authentication measures.
- e) modify, adapt, alter, copy (except as expressly permitted herein), translate, disassemble, decompile, or reverse engineer Product (or any of its components or parts thereof), or otherwise attempt to derive the source code of, decrypt, modify, or create derivative works (as defined under Applicable Laws) of, Product or any part thereof including the Documentation; provided, however, that configuring a Product within parameters set forth in the Documentation to create company's configuration shall not constitute a modification or derivative work;
- f) merge or embed any Software with or in other software, sub-routines, or other binary code segments;
- g) use any Product or its components to build, support, or assist in the creation of a competing product or service, or copy its ideas, features, structure, or interface;
- h) use a Product in a manner that: (i) violates Applicable Laws; or (ii) infringes or misappropriates any third party's intellectual property or proprietary rights; or (iii) interferes with the use of Products by any third party; or (iv) disrupts the Product's operating environment;
- i) engage in or promote any illegal, harmful, fraudulent, offensive use of the Products, or to transmit, store, display, distribute or otherwise make available related content; or
- j) publish or disclose to any third party, any benchmark tests or performance analysis relating to Product without Trend's prior written consent which may be withheld, delayed, or conditioned at its sole discretion.

Additionally, Trend Competitors or any other party with interests or intentions adverse to Trend may not access, install or use Trend Products. Any failure to comply with, or breach or violation of, this [Section 2.3](#) shall be considered a material breach of this Agreement by Company. In addition to any other rights or remedies afforded to Trend under this Agreement or under any Applicable Law, Trend reserves the right, but has no obligation, to investigate suspected violations of undertakings in this Section or any misuse of a Product and to take remedial action if Company breaches or violates any of the foregoing commitments, including the suspension, removal, or disablement of access to such Product. In addition, Company agrees that Trend may report any activity that it suspects violates any Applicable Law to the appropriate law or regulatory enforcement officials and provide any assistance required under such Applicable Law. Company acknowledges that any Marketplace Provider may have rights contractually agreed with Company that it may independently enforce directly against Company or it may require Trend to do so.

2.4 Hardware. Company is entitled to order Hardware under this Agreement. Each Hardware has certain terms applicable that are in addition to, or different than, those set forth herein ("Hardware Terms"). In the event Company receives Hardware, Company agrees that the applicable Hardware Terms are incorporated herein by reference and made a part hereof. In the event of conflict between the body of this Agreement, and the Hardware Terms, the Hardware Terms shall prevail. Hardware Terms are set forth at trendmicro.com/eula as may be updated from time-to-time.

2.5 Third Party Products and Services. Trend may make available certain third-party products and services alongside its Products, or bundle or otherwise distribute Products with Open Source Software. All such third-party products and services are subject to third party terms, which Trend is required to provide to Company. A full list of the third-party terms relevant to third party products and services is set forth at trendmicro.com/en_us/about/legal/third-party-terms.html or will be identified in (a) the Documentation, or (b) a "Read Me" file or an "About" file in the relevant Product.

2.6 Testing of Products. If Company is entitled to carry out a preview, evaluation, trial, proof-of-concept, or test of a Product (herein "Test Products"), then

the provisions of this Section shall apply and shall control over any conflicting terms of this Agreement. Company will have the right to use Test Products for a period as agreed with Trend, during which period Company may use Test Products solely for Company's internal evaluation in a non-production environment (i.e. an environment absent of any live production Company Data or otherwise perform productive work) for the sole purpose of deciding whether to purchase the right to continue to use the Product. Company acknowledges that Test Products are provided to company "AS IS", "WITH ALL FAULTS", "AS AVAILABLE" without warranty of any kind (express, implied, or otherwise). Company assumes all risk of use of Test Products. If Company's use continues after expiration of the testing period, Company agrees to pay the then-current published list price or the price as provided for in a Quote as provided by Trend (whichever is applicable) for the Product thereafter and in accordance with the applicable payment terms. The Parties agree that this Agreement shall apply to any such extended use. Trend has no obligation to provide any training or Maintenance for Test Products.

2.7 **Free Products.** From time to time, Trend may make available to Company certain tools, utilities, or applications at no charge ("Free Products"), including those accessible via Trend Vision One platform. Company will have the right to use Free Products solely for Company's Internal Business Use without charge and without obligation to purchase. Company acknowledges that Free Products are provided "AS IS", "WITH ALL FAULTS", "AS AVAILABLE" without warranty of any kind (express, implied, or otherwise). Company assumes all risk of use of Free Products. Trend has no obligation to provide any training, Maintenance, or support for Free Products unless otherwise expressly stated in Documentation. The Parties agree that this Agreement shall apply to any such use of Free Products, and no separate agreement or acceptance of additional terms shall be required.

2.8 **Ownership; Reservation of Rights.** Except for Company's limited use rights expressly granted in this Agreement (in particular the limited rights and license granted in Section 2.1), no other license, right, title, or interest in or to a Product or other intellectual property rights are granted to Company. Company acknowledges and agrees that each Product (including Test Products and Free Products) and all ideas, methods, algorithms, formulae, processes, and concepts incorporated into Products, and all revisions, corrections, modifications, enhancements, derivative works, releases, and upgrades, and anything developed (such as analysis of and any all Cyberthreat Data provided with Company Data to a Product) or made available by or on behalf of Trend, and any copies of the foregoing are: (a) the intellectual property of Trend, its Affiliates, and/or its or their licensors/suppliers; and (b) all right, title, and interest therein are reserved to and the sole property of Trend, its licensors, and/or such other persons as Trend may determine. Company will not alter or remove Trend's and/or its licensors' copyright notices or any other proprietary legends from any part of a Product.

2.9 **Changes and Improvements to Products.** Trend reserves the right during the Term (at its discretion and without notice to or consent from Company) to continually improve, update, and offer new versions of a Product (e.g., infrastructure/platform, features or functionality, security, technical configurations, and/or application features). Any such change shall be governed by this Agreement (except where use is contingent upon acceptance of additional terms) and shall not be treated as a breach of this Agreement nor give Company a right to a full or partial refund of any monies paid or payable hereunder. Company acknowledges and understands that certain Product platforms may be hosted by a Marketplace Provider under a separate services agreement with terms that are imposed on and agreed by Trend with respect to its use of such hosting services, some of which, Marketplace Provider requires Trend to "flow-down" to its customers benefiting from such Product platform. Trend specifically reserves the right (by notice in accordance with Section 11.7) to revise this Agreement at any time in order for Trend to remain in compliance with any Marketplace Provider services agreement (and applicable policies and other requirements thereof) for hosting such Products as well as the protection of Trend, its Affiliates, its and their suppliers, and its and their customers and other third parties.

2.10 **End-of-Life.** Trend reserves the right to discontinue any or all Products at any time and for any reason (each event herein "End-of-Life") by announcement or publication of notice to the general public or revision of its price list. Please refer to Trend's then-current End-of-Life Policies and a then-current list of Products subject to an End-of-Life notice at <https://success.trendmicro.com/en-US/support-policy/>. The Parties agree that such an End-of-Life announcement of any Product shall not be considered a breach of this Agreement by Trend when issued in accordance with the then current End-of-Life Policies, nor shall any such End-of-Life entitle Company to any claim for compensation or damages provided that Trend fulfills the obligations of any existing Orders. Company understands that all Products are subject to End-of-Maintenance and support policies.

3. Company Responsibilities.

3.1 **Marketplace Provider Account Compliance.** Where Company purchases from a Marketplace Provider, as a condition precedent to its rights to use and access Products, Company agrees to comply with all applicable Marketplace Provider terms and policies associated with its Marketplace Provider account. Company acknowledges and agrees that Trend is not responsible for any obligations to be performed by the Marketplace Provider under its agreement with Company.

3.2 **Setup and Administration.** Company is responsible for securing and maintaining connectivity and access to Products. Company must provide Trend with all necessary information to allow Trend to provision and make available Products, as well as permit registration that requires, among other things, an entity name and address, primary contact name and information, an email address, and other information as may be requested by Trend from time-to-time. Registration information will be treated as Confidential Information of Company. Company will provide to Trend (and maintain), contact information for Company's Administrator(s) who are the only End Users authorized or permitted to provide information required to manage, create company's configuration, as well as request and undertake Maintenance for Company.

3.3 **Authentication Credentials.** Company has sole control over access and use by its End Users, and Trend shall not be responsible for any activity (whether authorized or unauthorized) occurring on Company's services account hereunder provided that such access does not arise as a result of Trend failing to comply with its obligations under this Agreement. Company is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its use of a Product. Company will ensure that all End Users comply with Company's obligations under this Agreement and that the terms and conditions of Company's agreement with each End User are consistent with this Agreement. If Company becomes aware of any breach or non-compliance of Company's obligations under this Agreement by an End User or other third party, Company will immediately terminate such person's access to a Product and notify Trend. Further, Company is solely responsible for population, maintenance, security, protection, loss prevention, and backup of Company's systems and networks, Company Data, and other content, information, and devices.

3.4 **Fees.** Company will timely pay the applicable fees plus any applicable Taxes ("Fees") for use of Products in accordance with the Capacity (if any). Invoicing and collection of the Fees will be directly by Trend, or by its Marketplace Provider or Reseller, as the case may be. For purchases via:

- Marketplace Provider.** Company will timely pay to Marketplace Provider (acting as seller of record for Trend) the Fees then-published by Trend on such marketplace and/or the Fees as set out in a Private Offer for use of Products and any applicable terms and policies for the Marketplace Provider. If the Product permits Company to exceed the Capacity, then Company agrees to pay for any excess usage. In this case, invoicing and collection of Fees is done by the Marketplace Provider on behalf of and for the benefit of Trend.
- Reseller via Marketplace Provider.** If Company places an Order for Products via a Reseller on a marketplace, then such Reseller will set the Fees to be paid by the Company, but all other terms and conditions regarding the Products ordered by Company through such Reseller are exclusively set forth in this Agreement. All payment of Fees for Products will be made by Company directly through its Marketplace Provider account. Company acknowledges that each Reseller is an independent contractor and not a joint venturer, partner, fiduciary or agent of Trend and no Reseller has been or will be authorized to create any binding obligation, responsibility, duty, liability, warranty, guarantee or any otherwise contract for or act on behalf of Trend or modify, supersede, waive, renounce any right of Trend or obligation of Company set forth in this Agreement.

3.5 **Refunds.** Except as may be expressly set forth in Sections 7.4, 9.5 (b) and 10.3, the fees Company pays for Products are non-refundable and not subject to credit, offset, or pro-ration. Trend reserves the right to change or modify published fees for Products that may be ordered directly from Trend, or a Marketplace Provider (except where there is a Private Offer) in a manner and at such times as Trend shall determine in its discretion, unless prohibited by Marketplace Providers terms and policies applicable to Marketplace Providers' listings.

3.6 **Taxes (Direct Orders).** The fees and other charges in an Order placed directly with Trend do not include foreign and domestic national, federal, dominion,

provincial, state, municipal, or local sales, use, VAT, GST/GSM, excise, service, or similar transactional taxes (collectively “**Taxes**”) now or hereafter levied under Applicable Laws. Where applicable on direct Orders, Company will provide Trend all required information for the calculation, invoicing, and remittance of all applicable Taxes that Trend reasonably requests to determine whether Trend is obligated to collect and remit any Taxes from Company, including Company’s correct name, location, and sales tax or VAT/GST/GSM identification number where applicable. If Company is legally entitled to an exemption from the collection and remittance of any otherwise applicable Taxes, Company is responsible for providing Trend with legally sufficient tax exemption certificates for each taxing jurisdiction. Otherwise, Company will be invoiced for, and pay, all Taxes as required to be collected by Trend under Applicable Law.

3.7 **Credits.** Certain Products are accessed through the use of Credits, which are purchased in advance. Usage is metered daily, and Credits are drawn down on the first of each month based on the previous month’s usage. Company is solely responsible for managing its usage and ensuring it remains within its purchased intention. Company is hereby advised that it is possible to use Credits in excess of the amount purchased during a Subscription Period. Where excess usage occurs, the Company will be liable for the additional Credits consumed. Company acknowledges that enabling other functionalities in Trend Vision One will consume Credits differently than as intended and may result in overuse, unless such enablement is on a Test Product basis.

3.8 **Security Acknowledgement.** Certain portions of Products are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or performance and security of computers, systems, and/or networks. While Trend uses commercially reasonable efforts to properly identify applications and files for detection by its Products, given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, Trend cannot and does not represent, warrant, or guarantee that a Product will detect, identify, block, or completely remove, clean, remediate, or resolve any or all applications, routines, and files that are malicious, fraudulent, or other unwanted intrusions nor does it guarantee that data transmission by Company over the internet is secured by Trend. Trend is not responsible for any interception or interruption of any communications through the internet or networks or systems outside Trend’s control. Company understands and agrees that the success of its security efforts is dependent on a number of factors solely under Company’s control and responsibility such as: (a) use of network, hardware, software, cloud services, and software security tools in a coordinated effort to manage present and future security threats; (b) implementation of cybersecurity protocols and controls, network, cloud services, software and systems protections, as well as applicable monitoring and detection processes; (c) enforcement of appropriate internal security policies, procedures, and controls regarding access, security, encryption, use, and transmission of data; (d) the development and continual testing of applicable processes and procedures for (i) the backup and recovery of any network, system, software, database, and any stored data, and (ii) implementation of security-breach incident response practices; (e) conducting regular cybersecurity and privacy training for employees as well as any other relevant personnel; (f) having adequate vendor risk management processes; and (g) promptly downloading and installing updates to all networks, products, and software that are made available to Company by any of its third party vendors.

3.9 **High-Risk Environment.** Trend notifies Company that its Product have not been submitted for compliance testing, certification, or approval for any use in a High-Risk Environment. As a condition to Company utilizing any Product in a High-Risk Environment, Company agrees to implement the following mitigating measures: (a) secure and maintain any and all certifications and/or approvals required under any Applicable Law with respect to a Product that Company intends to deploy in a High-Risk Environment; and (b) undertake all appropriate and/or necessary testing, fail-safe, backup, redundancy and other measures necessary to ensure the safe deployment and use of any Product by Company in a High-Risk Environment.

3.10 **Audit and Non-Compliance.**

- a) **Audit for certain Products.** Company consents to Trend accessing Products to verify Company’s usage through technical means during the Term. Upon request, Trend may request, and Company agrees it will provide a system-generated report verifying Company’s use of Products within 30 days from the request date.
- b) **Audit for all Other Products.** During the Term and for 2 years after expiry, Company agrees to retain and make available upon request promptly accurate and complete records and other system information sufficient to provide verification of the Capacity (if any) or consumption of each Product and Company’s constant compliant utilization in accordance with this Agreement.
- c) **General Audit Right.** In any event, Trend shall have the right on 20 day’s prior written notice, to cause an audit (by an internationally recognized audit firm) to be conducted no more frequently than once each calendar year. Company will provide all records and information reasonably necessary for Trend or its independent auditor to successfully perform such audit.
- d) **Non-compliance.** If any audit described in Sections (a), (b) and (c) above reveals that (1) Company owes fees to Trend, or its Reseller and/or Marketplace Provider, or (2) any deployment or use of any Products is in excess of any use or deployment described in the applicable Certificate (including the Capacity) or (3) is otherwise out of compliance with this Agreement, then Company agrees to promptly correct such non-compliance and will promptly remit such underpaid amounts to Trend and/or its Reseller/ Marketplace Provider. Company consents to Trend’s disclosure of such audit results to the Reseller and/or Marketplace Provider. If the value of any unlicensed or excess utilization of Products audited under this [Section 3.10](#) is greater in the aggregate than 10% of the actual Capacity or licensed use for Products ordered by Company, Company agrees to reimburse Trend for its reasonable costs incurred in performing such audit.

4. **Company Data.**

4.1 **Responsibility for Company Data.** Company is solely responsible for Company Data and warrants to Trend that Company will: (a) provide all notices and ensure all necessary rights, consents, and approvals; and (b) take all other actions to ensure the lawfulness of Company’s use of Products, including without limitation its transmission or making available of Company Data (including Personal Data) to Trend. Trend does not assume any responsibility with respect to Company Data or Company’s use of Products (other than as may be expressly set forth in this Agreement).

4.2 **Right to Use Company Data.** Company hereby grants Trend a limited, non-exclusive, royalty-free, paid-up, license to use Company Data and access Products (unless, where possible, Company opts-out of such uses through Company’s configuration): (a) as necessary for Trend to ensure usage compliance, provide Products and its associated services, and Maintenance; (b) to maintain and improve the operation, security efficacy, and functionality of Trend’s software and services including Products; (c) to identify and collect information on potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors in order to continually provide Products and to improve Trend’s subject-matter databases; (d) for administration of this Agreement and each Product; (e) to comply with its legal obligations and exercise its rights under Applicable Laws; and (f) for other purposes set forth in this Agreement and/or Trend’s Global Privacy Notice published from time-to-time at trendmicro.com/privacy or as may be requested by Trend. Information relating to data processed by Trend Products as well as other compliance related information can be viewed in the Trend Trust Center here trendmicro.com/trustcenter.

4.3 **Company’s Configuration.** Company understands that a Product may contain certain Optional Features. Company is solely responsible for selecting and maintaining company’s configuration of each Product and assuring that Company’s configuration conforms to Company’s requirements, policies, and procedures regarding any processing of Company Data (including Personal Data) and complies with all Applicable Laws in each jurisdiction to which Company’s processing of any Company Data when using any Product may be subject (including Personal Data), or from which Company is accessing and utilizing an Optional Feature. At the initial activation and deployment of each Product and thereafter, Company agrees to: (a) review the capabilities, features, and functionality of the Optional Features and all other features and functionality in the relevant Documentation; and (b) activate, configure, restrict, limit, and/or disable each Optional Feature as may be described in the Documentation in order to cause Company Data to be processed in a manner that meets Company’s specific needs. Except for Optional Features, permissions and administrative selections described in the Documentation, Company understands that each Product is a standardized service hosted by or on behalf of Trend and is not customizable.

4.4 **Personal Data Processing.** Company and Trend agree to be bound by the Data Processing Addendum, it being further agreed that the Data Processing

Addendum shall only apply, if and to the extent that Trend acts as a Processor or sub-Processor of Personal Data that Company and its Affiliates provide or make available to Trend hereunder. With respect to each Affiliate of Company that accesses or utilizes any Product as permitted herein, Company agrees to be bound by the Data Processing Addendum for itself and on behalf of each such Affiliate, and Company represents and warrants to Trend that Company is duly authorized to do so on behalf of its Affiliates.

4.5 **Business Associate Agreement.** This Section only applies if and to the extent that Company, its Affiliate or a Contractor is a Covered Entity or a Business Associate as defined under HIPAA that makes available Protected Health Information (herein "PHI") as a part of Company Data it provides and or otherwise makes available to Trend under this Agreement and Trend otherwise meets the definition of a Business Associate under HIPAA with respect to such PHI. Trend has and will maintain the necessary processes, procedures, and training required to act as a Business Associate of Company/Affiliate(s) under HIPAA. In an effort to avoid the need to amend this Agreement now or in the future, the Parties hereby agree that Trend's HIPAA Business Associate Agreement (at https://www.trendmicro.com/en_us/about/trust-center/compliance.html?modal=s2h-btn-view-agreement-59c045) is incorporated herein and made a part hereof for all purposes on the terms and subject to the conditions and limitations set forth herein and therein and is applicable if and to the extent Trend acts as a Business Associate with respect to Company's or an Affiliate's PHI as the case may be. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended, restated, and/or expanded from time-to-time that is an Applicable Law only for USA Covered Entities, Business Associates, and its and their PHI as each such term is defined by HIPAA.

5. Maintenance and Support.

5.1 **Maintenance.** All Software licensed for a Subscription Period and all Cloud Services fees include Maintenance for the entire Subscription Period ordered by Company. However, Software licensed for a Perpetual Period includes Maintenance only for a period of 1 year from Delivery. Thereafter, additional Maintenance may be ordered for Software for a minimum of 1-year increments. In the event that Company allows the Maintenance for any Perpetual Period Product to lapse or such is not timely renewed, reinstatement will require back-payment of annual fees from the date of lapse or termination plus (where the lapsed period is for more than 90 days) an additional reinstatement fee of 25% of such renewal Maintenance fees; provided, however Trend shall have no obligation to permit Company to reinstate or otherwise purchase Maintenance if the period of lapse or expiration exceeds 1 year. Company acknowledges that if Updates for Software are not installed in a timely manner by Company, because of the constantly changing threat/security environment, the security capabilities and performance of any Product will rapidly degrade and will not perform in the manner and for the purposes for which it is designed. Trend will provide Maintenance as described in this Section for each Product via an Authorized Contact.

5.2 **Service Levels.** Trend may, at its discretion, make Service Levels available for certain Products. Company acknowledges that Service Levels will not be offered for all Products. Where Trend elects to provide Service Levels, it will comply with its obligations described in applicable Service Level agreement.

5.3 **PSP and Professional Services.** PSP and Professional Services are NOT subject to this Agreement even though they may be offered for purchase alongside Products. PSP services are provided under separate regional service agreements. Likewise, Professional Services are provided pursuant to a unique Professional Services SOW and for such compensation as may be agreed from time to time. Without prejudice to the foregoing, from time-to-time Company may request Trend to provide emergency incident response services and, in such event, there may be insufficient time to arrange a Professional Services SOW. In such case, the Parties agree that any such incident response Professional Services may be performed by Trend for Company based on the Incident Response Terms set forth at: trendmicro.com/legal as may be updated from time to time. Company agrees to make all payments in connection with such incident response Professional Services as described in the Quote.

6. Confidentiality.

6.1 **Confidentiality.** Each Party acknowledges that to perform its obligations under this Agreement, it may have access to Confidential Information. Each Party agrees that it will protect Confidential Information for the duration of this Agreement and for a period of 3 years thereafter at least to the same extent as it protects its own Confidential Information and in any event to the same extent as a reasonable person would undertake to protect such Confidential Information. Neither Party may use the other Party's Confidential Information except to perform its duties or exercise its rights under this Agreement. The Parties shall be entitled to share Confidential Information with such of its Affiliates, employees or subcontractors as will of necessity require it as a consequence of this Agreement (in which case the relevant Party shall ensure that each such Affiliate, employee and subcontractor shall comply with the obligations in this Section 6). If the Parties have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the effective date of this Agreement, then the Parties hereto agree that such prior agreement is superseded by this Agreement only with respect to the subject matter hereof.

6.2 **Exclusions.** The obligations of confidentiality in this Section 6 shall not apply to information that is:

- a) already lawfully known to the receiving Party at the time of access hereunder;
- b) becomes publicly available through no wrongful act of the receiving Party;
- c) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information;
- d) has been rightfully received from a third party not under any obligation of confidentiality;
- e) disclosed in any legal proceeding arising from or in connection with this Agreement; or
- f) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure (only if legally permissible) adequate for the owning Party to take reasonable action to prevent such disclosure.

6.3 **Destruction of Confidential Information.** Unless otherwise agreed to by both Parties, upon termination of this Agreement, each Party will irretrievably destroy, the other Party's Confidential Information in its possession, except for those records in each Party's possession required to be retained for legal, tax and audit purposes and those maintained in a Party's corporate archival by back-up systems.

6.4 **Feedback.** Trend shall be the exclusive owner of any Product-related comments, suggestions, design changes or improvements, that Company may provide (collectively, "**Product Feedback**"), and its Affiliates and licensors are hereby granted by Company a perpetual, irrevocable, royalty-free license to use Product Feedback for any purpose whatsoever without any restriction or limitation.

6.5 **Performance Data.** Trend may use, and Company consents to, performance data being used for analysis for Trend's own business purposes, including to maintain, operate, and improve its products. Performance data for the purposes of this Section means data generated or collected in connection with use of Products, such as, but not limited to, usage data, logs, support data, telemetry data, Cyberthreat Data. Performance data is not Confidential Information and shall not include any Personal Data.

7. Warranty and Exclusions.

7.1 **Cloud Services.** Trend warrants to Company that Cloud Services will substantially conform to its then-current Documentation under normal use and circumstances until the expiration or termination of Company's paid right to access and use such Cloud Service under this Agreement.

7.2 **Software.** Trend warrants to Company that on the initial Delivery Date and for a period of 30 days thereafter, Software provided for a Perpetual Period and a Subscription Period will substantially conform to its Documentation. For the avoidance of doubt, Updates or replacement of non-conforming Products do not give rise to or create a new, renewed, or extended warranty period for the applicable Product.

7.3 **Exclusions.** The aforementioned warranties in Sections 7.1 to 7.2 shall not apply: (a) to events or circumstances caused by accident, abuse or use of any Product in a manner inconsistent with this Agreement; (b) to any issues related to the performance, operation of security of a Product arising from

Company Data or any third party services (including Marketplace Providers) where applicable; (c) in the event of any Product failure arising or resulting from improper installation or any modification, alteration, or addition thereto, or any problem or error in the operating system software with which a Product is installed and is designed to operate; (d) if any problem or error has resulted from improper use, misapplication or misconfiguration, or the use of the Product with other programs or services that have similar functions or features which are incompatible with the Product; (e) if the Product is licensed as a Test Product for which Trend does not charge a fee, or is a Free Product; (f) in the event of failure to install/deploy the most current Update if such Update would resolve an Escalated Issue (as defined in the Maintenance Terms) and/or an Escalated Issue is caused in whole or in part by a product or technology that Trend did not supply; or (g) if Trend does not receive written notice of a non-conformity within the applicable warranty period.

7.4 **Remedies.** If it is established that Trend has breached any of the above warranties during the applicable warranty term, Trend shall use reasonable efforts to cure the breach; or in the event Trend cannot, after commercially practicable attempts, cure the breach, either Trend or Company may terminate the license or rights granted for such Product and Trend will provide a refund (within 30 days) of unused fees pre-paid by Company to Trend, the Reseller and/or Marketplace Provider for the nonconforming Product, if any, as of the effective date of such termination. To benefit from this warranty and the remedies stated herein, Company must report the alleged breach of warranty to Trend with reasonable specificity within 10 days of its discovery in writing. The foregoing warranty and remedies are Company's sole and exclusive remedy.

7.5 **Disclaimer.** Except as expressly set forth in this Section 7, all Products are provided "AS IS", "WITH ALL FAULTS" and "AS AVAILABLE" without warranty of any kind or nature (express, implied or otherwise). All other warranties, conditions and other warranty terms implied by statute or common law including any warranty and/or condition of merchantability, fitness for a particular (such as High-Risk Environment) or general purpose, title, satisfactory quality, accuracy, non-infringement of third-party intellectual property rights, or ability to achieve a particular result to the fullest extent permitted by law excluded. Further, Trend does not represent, warrant or guarantee that: (a) a Product will be error-free, continuously available or the use thereof uninterrupted; (b) use of a Product will provide complete and absolute protection of Company's systems, networks, endpoints, assets, information, and/or data from and against any or all Cyberthreat Data or other possible risks; or (c) a Product will operate in combination with Company Data, or with any other hardware, software systems, cloud service or data not provided or required by Trend.

8. LIABILITY.

8.1 UNLIMITED LIABILITY:

- (a) NEITHER PARTY WILL EXCLUDE OR LIMIT ITS LIABILITY FOR DAMAGES RESULTING FROM:
 - (i) UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION UNDER SECTION 6;
 - (ii) FRAUD, FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE;
 - (iii) DEATH OR BODILY INJURY CAUSED BY A PARTY'S NEGLIGENCE; OR
 - (iv) ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.
- (b) TREND WILL NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DAMAGES RESULTING FROM ITS OBLIGATIONS UNDER INTELLECTUAL PROPERTY INDEMNITY SECTION 10.1.
- (c) COMPANY WILL NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DAMAGES RESULTING FROM BREACH OF ITS OBLIGATIONS UNDER USE RESTRICTIONS SECTION 2.3.

8.2 **LIABILITY CAP.** SUBJECT TO SECTIONS 8.1 AND 8.3, AND REGARDLESS OF THE BASIS OF LIABILITY, TREND'S AGGREGATE LIABILITY TO COMPANY ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES NOT EXCEEDING THE TOTAL FEES ACTUALLY PAID BY COMPANY FOR THE PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE FIRST GIVING RISE TO SUCH CLAIM. NOTWITHSTANDING THE FOREGOING, TREND'S LIABILITY FOR ANY TEST PRODUCTS FOR A FEE, SHALL BE LIMITED IN THE AGGREGATE FOR ALL CLAIMS AND CAUSES OF ACTION TO USD \$1,000.00. THE FOREGOING LIABILITY CAP SHALL ALSO BE APPLICABLE TO TREND, ITS AFFILIATES AND ITS SUPPLIERS.

8.3 EXCLUSIONS. WITHOUT PREJUDICE TO SECTIONS 8.1 AND 8.2, UNDER NO CIRCUMSTANCES:

- a) SHALL TREND BE LIABLE TO COMPANY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS, OR REVENUES REGARDLESS OF THE NATURE OF THE CLAIM OR CAUSE OF ACTION ASSERTED EVEN IF TREND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR SUCH DAMAGES WERE REASONABLY FORESEEABLE.
- b) SHALL TREND NOR ITS AFFILIATES BE LIABLE TO COMPANY FOR THIRD PARTY PRODUCTS AND SERVICES (AS DESCRIBED IN SECTION 2.5).
- c) SHALL TREND, ITS AFFILIATES, LICENSORS AND SUPPLIERS BE LIABLE TO COMPANY FOR LOSS OR DAMAGE (WHETHER DIRECT, OR INDIRECT, FORESEEABLE OR NOT) CAUSED BY OR ARISING FROM: (i) ANY PRODUCT PROVIDED FOR NO FEE; OR (ii) ANY ACTIONS TAKEN IN GOOD FAITH TO ENFORCE ITS USE RESTRICTIONS AS DESCRIBED IN SECTION 2.3; (iii) THE USE OF ANY PRODUCT IN A HIGH-RISK ENVIRONMENT; OR (iv) ANY INTERCEPTION OR INTERRUPTION OF ANY COMMUNICATIONS THROUGH THE INTERNET, NETWORKS OR SYSTEMS OUTSIDE OF TREND'S CONTROL.

8.4 **RISK ALLOCATION.** THE AGREEMENT ALLOCATES THE RISK BETWEEN TREND AND COMPANY. THE FEES FOR THE PRODUCTS REFLECT THIS ALLOCATION OF RISK AND LIMITATIONS OF LIABILITY.

9. Term and Termination.

9.1 **Order Term applicable to Products:** The rights granted to Company hereunder shall take effect as of the date described in the Certificate. Products licensed for a (i) Subscription Period shall remain in effect until the term of such Subscription Period expires, and (ii) Perpetual Period shall continue to be licensed indefinitely hereunder in each case unless earlier terminated or suspended in accordance with this Agreement. Maintenance is provided to Company for the duration described in Section 5.1.

9.2 **Term applicable to Marketplace Provider Orders:** The Company's right to use Products will become effective as of the date the relevant Order is accepted by the Marketplace Provider and the Product is made available to the Company and shall continue in effect thereafter: (a) if such Product is sold for a Subscription Period, until cancelled by Company if permitted by Marketplace Provider terms and policies; or (b) if such Product is sold under a Private Offer, until the purchased term expires subject always to earlier termination by either Party of a Product in accordance with this Agreement, and/or any Marketplace terms and policies. If Company has been provided with a Private Offer, Company acknowledges and agrees that irrespective of any statutory termination rights, upon acceptance of the Private Offer it waives such termination rights and any termination of such Private Offer shall be in accordance with the agreed termination provisions set out in that Private Offer only. If Company selected auto-renewal of a Product via Marketplace Provider, such renewal will be at the then current fees as determined by Trend at the time of renewal and such renewal will be based on the then current version of this Agreement published on the Trend website which can be viewed at trendmicro.com/eula unless the Parties agree otherwise in writing.

9.3 **Suspension and Termination by Trend:** In addition to any rights for suspension or termination that may be available via any applicable Marketplace Provider terms and policies, Trend may suspend or terminate Company's right to use Products (in whole or in part) at any time provided Company is given reasonable written notice (where possible) if Trend determines that:

- a) Company or its End Users (i) pose a security risk to Products or any third party, (ii) may adversely impact Products or any third party, (iii) is incompliant in any way with Section 2.3, or (iv) may subject Trend, its Affiliates, its licensors, or any third party to liability, or (v) to the extent permitted by Applicable Law, effective immediately, Company files or has filed a petition for bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a

substantial part of its property; or is unable to pay its debts generally; or

b) Company is in material breach of this Agreement incapable of cure or a breach capable of cure remains uncured for 20 days after Company is notified of such breach.

Company will immediately cease use of the Products identified in such notice(s) during any period of suspension, or upon termination of this Agreement or other termination of Company's right to use such Product. For any termination or suspension by Trend in accordance with the foregoing, Trend will not provide, or be liable for, any refund or proration of fees.

9.4 **Suspension and Termination by Marketplace Provider.** Company acknowledges that the Marketplace Provider terms and policies may include rights for Marketplace Provider to suspend and terminate Company's Marketplace Provider account. In such event, Trend will not provide, or be liable for, any refund, including fees pre-paid by Company for such Products.

9.5 **Termination by Company.**

a) Company may terminate for its convenience this Agreement and/or Company's use of a Product at any time with written notice to Trend, in which event Company (i) shall still be bound to pay for any committed spend as described in a Private Offer, Order, or otherwise; and (ii) shall still be obliged to fulfill all payment obligations up to the original expiry date and (iii) will not be entitled to a refund or credit of unused fees (if any) that Company paid in advance.

b) Notwithstanding the foregoing, where Company is entitled to terminate this Agreement for a material breach by Trend (after giving Trend at least 20 days prior detailed written notice and an opportunity to cure such material breach during such notice period where such breach is remediable) Company will be entitled to receive a pro-rata refund from Trend of any prepaid but unused fees related to any affected Product.

9.6 **Company's Termination Duties.** Upon expiration or termination of this Agreement and/or Company's use of a Product for any reason or no reason, Company will: (a) cease any use of such Product; and (b) irrevocably destroy all copies in Company's possession or control of the Software, including any Documentation provided by Trend; and (c) remove the affected Products from Company's Marketplace Provider Account. Upon request, Company will certify in writing that the foregoing has occurred. Except where termination occurs pursuant to Section 9.5 (b), the Company is not relieved from any obligation to pay fees and Taxes that remain unpaid.

9.7 **Survival.** All provisions of this Agreement which by their nature are destined to survive the duration or termination of this Agreement shall so survive.

10. Intellectual Property Indemnity.

10.1 **IP Claim Indemnity.** Trend (at its cost) will defend Company from each IP Claim and indemnify Company from the resulting costs and damages finally awarded against Company that are specifically attributable to such IP Claim or those amounts agreed to by Trend in a monetary settlement, subject always to the conditions, qualifications and limitations in this [Section 10](#). No settlement of any IP Claim will be made by Company (and Trend will have no responsibility or obligation hereunder or otherwise) without Trend's express written consent, which may be withheld at its sole discretion. The obligation of Trend under this [Section 10](#) for any IP Claim is subject to Company giving Trend: (a) prompt written notice of any IP Claim (but in any event notice in sufficient time for Trend to respond without prejudice to its position), provided that a failure to provide notice shall only relieve Trend of its indemnity obligation to the extent Trend was prejudiced by such failure; (b) sole and complete control and authority over the defense, negotiations, and settlement of such IP Claim; and (c) reasonable requested information, cooperation and assistance, at Trend's expense, with regard to the defense, negotiations, or settlement of such IP Claim. Trend will not settle any IP Claim to the extent such settlement requires that Company admit any liability on the part of Company without Company's prior consent. Company may participate in the defense of any IP Claim at its cost with counsel of its selection. This indemnity is personal to Company and may not be assigned/transferred (in whole or in part) or otherwise passed through to any third party.

10.2 **Indemnity Exclusion.** The foregoing indemnity shall not apply to the extent such IP Claim is based on (a) any use of Product that is NOT in accordance with this Agreement or Applicable Laws; (b) Company Data and/or other materials that Company provides or makes available in connection with its use of Product; (c) any use of a version of any Software that has been superseded with a version made available to Company, if the IP Claim would have been avoided by using an unaltered current version of such Software; (d) any Open Source Software; or (e) any third party allegation or assertion made against a Product (or any output thereof) that involves use of such Product by Company in combination with any other software, service, business process, or technology not provided by Trend or not specified as being required by the applicable Documentation where the IP Claim would not have arisen or would have been avoided but for such combination.

10.3 **IP Claim Mitigation.** Should a Product at any time become, or in Trend's opinion be likely to become, the subject of an IP Claim, Trend shall have the right, at its sole option to: (a) procure for Company the right to continue using such Product as provided hereunder, or (b) modify such Product so that it no longer is the subject of an IP Claim, while maintaining substantially the same utility or functionality. If neither (a) or (b) are commercially practicable in Trend's opinion, Trend may terminate this Agreement as to such Product upon written notice and Trend will promptly refund to Company any unused, prepaid fees Company may have paid for such Product. The Parties agree that any termination hereof in accordance with this [Section 10](#) shall not be treated as a breach of this Agreement by Trend and shall not entitle Company to any claim for damages, losses, or expenses of any kind or nature arising from or related to such termination including for replacement cost or loss of use of the Product or any lost profits, savings, or revenue arising from or related to the Product. This [Section 10](#) states Trend's sole and exclusive obligation and liability to Company, and Company's sole and exclusive right and remedy against Trend for any IP Claim.

11. General Provisions.

11.1 **Assignment.** Company shall not assign (in whole or in part) this Agreement, or delegate or sublicense any of Company's rights under this Agreement, without Trend's prior written consent. Any assignment, delegation, or sublicense attempted without such consent shall be null and void. The Parties agree that Trend may, without prior consent, assign this Agreement to any Trend Affiliate, or delegate or sublicense the performance of Trend's obligations to any Trend Affiliate or to any subcontractor provided that Trend remains fully responsible for the performance of such obligations as if performed by Trend itself. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

11.2 **Interpretation.** The headings within this Agreement are for convenience only and will not affect the interpretation of this Agreement. The words "include", "includes", and "including" shall be interpreted as introducing a list of examples which do not limit the generality of any preceding words or any words in the list of examples.

11.3 **No Waivers.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit a Party's right to enforce such provision at a later time. To be effective, all waivers must be in writing, specifying the provision and actions or inactions being waived, and signed by the Parties.

11.4 **Export/Import Control.** In connection with this Agreement, the access, use, export or re-export of a Product and related technical data and services (collectively "Controlled Technology") is subject to Applicable Laws with respect to the export (including "deemed export" and "deemed re-export" regulations) and import of Controlled Technology by Company, its Affiliates, Contractors, and/or its End Users. Company acknowledges and agrees that (a) each Product is designed with capabilities to permit (at its and their discretion) Company, its Affiliates, Contractors, and/or its End Users to access the Product without regard to geographic location and to transfer or otherwise move Company Data between the Product, its Affiliates, Contractors, and/or its End Users anywhere in the world; (b) Company is solely responsible for compliance with Applicable Laws in connection with its access, use, export, import and re-export of Controlled Technology, including obtaining any required licenses, permits, or approvals for deployment, transfer or re-export of Controlled Technology by Company, Its Affiliates, Contractors, and/or End Users; (c) Company is solely responsible for the authorization and management

of End User accounts, and for any geographic transfer of Company Data in connection with the Product. Company represents and warrants to Trend that neither Company, its Affiliates, its Contractors, nor any of its End Users are under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or prohibited entity as defined in any Applicable Law.

11.5 **U.S. Government Use.** This Section applies to U.S. Government End Users only. The Software and accompanying Documentation are “commercial computer software” and “commercial computer software documentation”, respectively, as such terms are used in FAR 12.212 and DFARS 227.7202. In accordance with FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, if the Software and Documentation are being acquired by or on behalf of the U.S. Government, then the U.S. Government’s rights in the Software and its Documentation shall be as specified in this Agreement. No other rights are granted by Trend, but any inconsistency in the terms and conditions of this Agreement with federal procurement regulations is not enforceable against the U.S. Government.

11.6 **WEEE Directive.** Trend complies with the WEEE regulations. For information on the disposal of electronic waste, visit https://www.trendmicro.com/en_us/about/trust-center/compliance.html?modal=44683d.

11.7 **Notices.**

- 11.7.1 **If to Company.** Trend may provide to Company: (a) a legal notice, by sending a message to the email address then associated with Company’s Account, if any; and (b) product or support notices, by posting a notice on <https://success.trendmicro.com/>. Product or support notices posted on the Trend website will be effective upon posting and legal notices will be effective when Trend sends the email provided Trend has evidence of sending. It is Company’s responsibility to keep Company’s email address current.
- 11.7.2 **If to Trend.** To give Trend legal notice under this Agreement, Company must contact Trend by email to legal_notice@trendmicro.com. Trend may update the email for notices by posting a notice on <https://success.trendmicro.com/>. Notices provided by email will be effective when the email is sent, provided Company has evidence of sending.

11.8 **Consent to Electronic Communications.** The Parties agree that all communications, notices, and documents relating to this Agreement may be transmitted electronically, including via email or other digital means. Each Party consents to receiving such communications in electronic form and acknowledges that such communications shall have the same legal effect as if provided in hard copy. The Parties further agree that electronic signatures shall be deemed valid and binding to the same extent as handwritten signatures, subject to Applicable Law.

11.9 **Severability.** The Parties agree that the unenforceability of any term of this Agreement shall not impair the enforceability of any other part of this Agreement. In the event that any term of this Agreement conflicts with the governing law under which this Agreement is to be construed or if any such term is held unenforceable in whole or in part by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to the minimum extent necessary to render it valid, enforceable, and insofar as possible reflect the original intentions of the Parties.

11.10 **Force Majeure.** Neither Party shall be liable nor in breach of this Agreement for any delay or failure to perform its obligations due to any circumstance beyond its control including without limitation: acts of God; declared or undeclared war; terrorism; sabotage; criminal actions; armed conflict; actions of civil authorities or governments; epidemics or pandemics; earthquakes; fires; floods; cyber-attacks; network intrusions; “zero day” threats or attacks; private or state-actor hacking, denial-of-service attacks, or other malicious actions; telecom/internet congestion, slowdown or outage; computer, networks, or systems failures or delays involving hardware, software, or services not within Trend’s possession, control and responsibility; or labor strike, embargo, or boycott. The non- performing Party will take commercially reasonable steps to (a) mitigate the effects of any failures and (b) provide written notice of such force majeure. However, this Section will not excuse either party of their obligation to take reasonable steps to follow normal disaster recovery procedures. Under no circumstance will a force majeure event excuse Company of its payment obligations unless such results in a failure of the relevant banking wire system or other failure of the banking system that deprives Company access to otherwise available funds.

11.11 **Supplier Ethics.** Trend is committed to conducting its business free from unlawful, unethical or fraudulent activity. Trend assures Company that it will act in a manner consistent with the minimum ethical and professional standards described in the Trend Supplier Code of Conduct, including prompt reporting of unlawful, fraudulent or unethical conduct. Trend’s Supplier Code of Conduct is available upon request.

11.12 **Independent Contractors.** Nothing in this Agreement is intended or shall be construed to create or establish any agency, partnership, or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder, and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. Neither Party has any authority to act as agent for, or to incur any obligations on behalf of or in the name of, the other Party or its Affiliates.

11.13 **No Third Party Beneficiaries.** This Agreement (i) is entered into solely between and for the benefit of, and may be enforced only by, the Parties and no third party shall have any rights hereunder, whether arising under any statute now or hereafter enacted, or otherwise, and (ii) shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties including employees, independent consultants, agents, suppliers, and Affiliates of a Party, or otherwise create any obligation or duty to any third party.

12. **Contracting Entity and Governing Law.**

12.1 This Agreement shall be governed by and construed in accordance with the laws and jurisdiction specified for the relevant Trend contracting entity, as identified in the applicable Order Form or Statement of Work. The corresponding governing law and jurisdiction for each Trend entity are set out in the Contracting Entity and Governing Law Schedule, available at https://www.trendmicro.com/en_gb/about/legal.html, which is deemed to be part of, included in, and incorporated into this Agreement by reference. Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction listed therein.

End of Agreement