

GLOBAL PRODUCTS AGREEMENT
FOR TREND MICRO PRODUCTS

THE RIGHT TO USE TREND MICRO PRODUCTS FOR COMMERCIAL PURPOSES IS SUBJECT TO ACCEPTANCE OF THIS AGREEMENT, WHICH SHALL GOVERN COMPANY'S USE OF ALL TREND MICRO PRODUCTS ACQUIRED HEREUNDER. DIFFERENT TERMS APPLY TO TREND MICRO 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 Micro.

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BY (1) ORDERING A PRODUCT; AND/OR (2) USING AND CONTINUING TO USE A PRODUCT, COMPANY AGREES THAT ANY SUCH ACTION CONSTITUTES:

- (a) **ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THIS AGREEMENT;**
- (b) **ACCEPTANCE AND ASSENT TO THIS AGREEMENT AND THAT FURTHER WRITTEN APPROVAL IS NOT REQUIRED FOR THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT;**
- (c) **ACCEPTANCE OF THIS VERSION OF THE AGREEMENT, WHICH ALSO CONSTITUTES ACCEPTANCE OF ALL FUTURE VERSIONS OF THIS AGREEMENT PUBLISHED ON TREND MICRO'S WEBSITE, AND ACKNOWLEDGEMENT THAT THE APPLICABLE TERMS AT ANY MOMENT IN TIME WILL BE THE MOST RECENT VERSION PUBLISHED;**
- (d) **AN ONGOING REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY COMPLIES WITH ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH IN THIS AGREEMENT; AND**
- (e) **A REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY'S REPRESENTATIVE ACTING ON ITS BEHALF IS AUTHORIZED TO ACCEPT, AGREE, AND BIND 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 Micro (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or otherwise arising from any course of dealing between the Parties that are not specifically set forth herein are all superseded by this Agreement.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.
- 1.4 **Procurement Under This Agreement.** Company may order Products under this Agreement by one of three methods:
 - (a) **Directly from Trend Micro.** Company may receive a Quote and place an Order directly with Trend Micro, which Order if accepted by Trend Micro 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 Micro.
 - (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 Micro for Products through a Trend Micro distributor, but such Order is subject to acceptance or rejection by Trend Micro. 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 Micro. No Reseller is authorized to act on behalf of Trend Micro.
 - (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 Micro, 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 Micro and is not with the Marketplace Provider; (B) Products are designed, tested, updated, supported, and hosted by and/or on behalf of Trend Micro as owner of each Product and Trend Micro (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 Micro 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 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 Micro excess use fees at the rates prescribed in the Quote or Private Offer upon request.

"Certificate" means a written confirmation issued by Trend Micro 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 Micro-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 Micro) 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 Micro 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 Micro'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.

"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 Micro in connection with this Agreement; or (b) is accessed, collected, or discovered by Trend Micro 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 Micro's Data Processing Addendum at trendmicro.com/dpa that is applicable if and to the extent Trend Micro 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 Micro 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 Micro. All on premise Products and their Maintenance will be deemed for all purposes to be Delivered in the country of Trend Micro'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 Micro 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.

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

"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 in order 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) 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 Micro of a new version of an existing Product that contain (in Trend Micro's determination) significant new features, improvements, capabilities, structures, and/or functionality that Trend Micro 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 Micro 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 Micro. 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 Micro via the Reseller or the Marketplace Provider at their sole discretion, which acceptance may be signified by Trend Micro's issuance of a Certificate to Company.

"Party" means only each of Company and Trend Micro, 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 Micro 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.

"Professional Services" means a professional services engagement by Trend Micro 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 Micro or a third party.

"PSP" means the premium support program provided by Trend Micro 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 Micro, 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 Micro'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 Micro or its distributor to secure Orders for the sale of Products.

"Services" means any Trend Micro-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 Micro from time-to-time.

"Software" means the object code version of any Trend Micro-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 2.5](#).

“Trend Micro 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 Micro’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 Micro 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.

2.2 **Affiliate, Contractor Use and Bring Your Own License (“BYOL”).** Trend Micro grants Company the right to authorize and permit (for no additional fees or amounts due to Trend Micro) 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 Micro for all acts and omissions of its Affiliates and Contractors in exercising the rights described in this [Section 2.2](#). For the avoidance of doubt, since all Maintenance is provided by Trend Micro only to Company, no Affiliate and/or Contractor will be entitled to request or receive Maintenance directly.

2.3 **Use Restrictions.** Except as may be expressly permitted in this Agreement (including the Documentation), Company shall not nor shall Company authorize, encourage, or permit End Users to:

- a) use any Product (including Open Source Software) other than as expressly permitted by this Agreement (including the Documentation);
- b) use any Product’s components, files, modules, or related licensed materials separately from a Product;
- c) use a Product other than for Internal Business Use;
- d) disable, tamper with, or otherwise attempt to (i) circumvent any billing mechanism that meters Company’s use of a Product, or (ii) use a Product in a way intended to avoid incurring fees or exceeding the Capacity (if any), or (iii) gain unauthorized access to a Product;
- e) attempt to probe, scan, or test the vulnerability of the environment of any Product or to breach any security or authentication measures used by or in such Product;
- f) 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, configuring a Product within its policy parameters set forth in the Documentation to create company’s configuration shall not constitute a modification or derivative work;
- g) merge or embed any Software with or in other software, sub-routines, or other binary code segments;
- h) 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](#);
- i) use a Product: (i) as a paid or unpaid service bureau or otherwise to provide services directly or indirectly to third parties (such as business processing outsourcing); (ii) to provide services to third parties on a time-share basis; or (iii) otherwise commercially exploit or make the Product available to any third party except as specifically set forth in [Section 2.2](#);
- j) access, evaluate, observe, or use a Product (or any of its components) to build or support (or assist a third party in building or supporting) the improvement and/or creation of a competitive product or service, or copy any ideas, features, functions, organization, structure, graphics, or user interface of a Product for any reason;
- k) use a Product in a manner that: (i) violates Applicable Laws; or (ii) infringes or misappropriates the intellectual property rights of any third party; or (iii) interferes with the use of Products by any third party; or (iv) interferes with the proper functioning of the equipment and environment used to provide Products;
- l) engage in or promote any illegal, harmful, fraudulent, offensive use of the Products, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, or offensive; or
- m) publish or otherwise make available to any third party, any benchmark tests or performance analysis relating to Product without the express written permission of Trend Micro which may be delayed, withheld or conditioned at the sole discretion of Trend Micro.

Additionally, Trend Micro Competitors or any other party with interests or intentions adverse to Trend Micro may not access, install or use Trend Micro 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 Micro under this Agreement or under any Applicable Law, Trend Micro 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 Micro 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 Micro 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 Micro 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 Micro 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 an evaluation, trial, proof-of-concept, or test of a Product (herein "**Test Product**"), 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 the Test Product for a period as agreed with Trend Micro, during which period Company may use the Test Product 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 the Test Product 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 for the Product thereafter in accordance with the applicable payment terms. The Parties agree that this Agreement shall apply to any such extended use. Trend Micro has no obligation to provide any training or Maintenance for Test Products.
- 2.7 **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 and all ideas, methods, algorithms, formulae, processes, and concepts incorporated into a Product, 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 Micro, and any copies of the foregoing are: (a) the intellectual property of Trend Micro, 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 Micro, its licensors, and/or such other persons as Trend Micro may determine. Company will not alter or remove Trend Micro's and/or its licensors' copyright notices or any other proprietary legends from any part of a Product.
- 2.8 **Changes and Improvements to Products.** Trend Micro 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 Micro with respect to its use of such hosting services, some of which, Marketplace Provider requires Trend Micro to "flow-down" to its customers benefiting from such Product platform. Trend Micro specifically reserves the right (by notice in accordance with [Section 11.7](#)) to revise this Agreement at any time in order for Trend Micro 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 Micro, its Affiliates, its and their suppliers, and its and their customers and other third parties.
- 2.9 **End-of-Life.** Trend Micro 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 Micro'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 Micro 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 Micro 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 Micro 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 Micro with all necessary information to allow Trend Micro 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 Micro from time-to-time. Registration information will be treated as Confidential Information of Company. Company will provide to Trend Micro (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 Micro 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 Micro 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 Micro. 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 Micro, or by its Marketplace Provider or Reseller, as the case may be. For purchases via:
- a) **Marketplace Provider.** Company will timely pay to Marketplace Provider (acting as seller of record for Trend Micro) the Fees then-published by Trend Micro 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 Micro.
 - b) **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 Micro 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 Micro or modify, supersede, waive, renounce any right of Trend Micro 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 Micro reserves the right to change or modify published fees for Products that may be ordered directly from Trend Micro, or a Marketplace Provider (except where there is a Private Offer) in a manner and at such times as Trend Micro 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 Micro 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 Micro all required information for the calculation, invoicing, and remittance of all applicable Taxes that Trend Micro reasonably requests to determine whether Trend Micro 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 Micro 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 Micro under Applicable Law.

- 3.7 **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 Micro 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 Micro 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 Micro. Trend Micro is not responsible for any interception or interruption of any communications through the internet or networks or systems outside Trend Micro'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.
- 3.8 **High-Risk Environment.** Trend Micro 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.
- 3.9 **Audit and Non-Compliance.**
- a) **Audit for certain Services.** If a Service is programmed with the technological features to provide verification, Trend Micro may request, and Company agrees it will provide a system-generated report verifying Company's use of Services 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 Micro 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 Micro 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 Micro, 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 Micro and /or its Reseller/ Marketplace Provider. Company consents to Trend Micro'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 3.9](#) is greater in the aggregate than 10% of the actual Capacity or licensed use for Products ordered by Company, Company agrees to reimburse Trend Micro 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 Micro 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 Micro. Trend Micro 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 Micro a limited, non-exclusive, royalty-free, paid-up, license to access and use Company Data (unless, where possible, Company opts-out of such uses through Company's configuration): (a) as necessary for Trend Micro to provide Products to Company; (b) to maintain and improve the operation, security efficacy, and functionality of Trend Micro'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 Micro'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 Micro's Global Privacy Notice published from time-to-time at trendmicro.com/privacy or as may be requested by Trend Micro. Information relating to data processed by Trend Micro Products as well as other compliance related information can be viewed in the Trend Micro 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 Micro and is not customizable.
- 4.4 **Personal Data Processing.** Company and Trend Micro 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 Micro acts as a Processor or sub-Processor of Personal Data that Company and its Affiliates provide or make available to Trend Micro 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 Micro 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 Micro under this Agreement and Trend Micro otherwise meets the definition of a Business Associate under HIPAA

with respect to such PHI. Trend Micro 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 Micro'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 Micro 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 Micro 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 Micro will provide Maintenance as described in this Section for each Product via an Authorized Contact.

5.2 Service Levels. At its sole discretion, Trend Micro may provide Products in accordance with Service Levels.

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 Micro 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 Micro for Company based on the Incident Response Terms set forth at: [trendmicro.com/legal](https://www.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 Micro 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 Micro may use, and Company consents to, performance data being used for analysis for Trend Micro'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 Micro 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 Micro warrants to Company that on the initial Delivery Date and for a period of 30 days thereafter, Software provided for a Perpetual 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 Micro does not charge a fee; (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 Micro did not supply; or (g) if Trend Micro does not receive written notice of a non-conformity within the applicable warranty period.

7.4 Remedies. If it is established that Trend Micro has breached any of the above warranties during the applicable warranty term, Trend Micro shall use

- reasonable efforts to cure the breach; or in the event Trend Micro cannot, after commercially practicable attempts, cure the breach, either Trend Micro or Company may terminate the license or rights granted for such Product and Trend Micro will provide a refund (within 30 days) of unused fees pre-paid by Company to Trend Micro, 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 Micro with reasonable specificity within 10 days of its occurrence 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 Micro 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 Micro.
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 MICRO 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 MICRO'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 MICRO'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 MICRO, ITS AFFILIATES AND ITS SUPPLIERS.
- 8.3 **EXCLUSIONS.** WITHOUT PREJUDICE TO [SECTIONS 8.1 AND 8.2](#), UNDER NO CIRCUMSTANCES:
- a) SHALL TREND MICRO 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 MICRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR SUCH DAMAGES WERE REASONABLY FORESEEABLE.
- b) SHALL TREND MICRO NOR ITS AFFILIATES BE LIABLE TO COMPANY FOR THIRD PARTY PRODUCTS AND SERVICES (AS DESCRIBED IN [SECTION 2.5](#)).
- c) SHALL TREND MICRO, 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 MICRO'S CONTROL.
- 8.4 **RISK ALLOCATION.** THE AGREEMENT ALLOCATES THE RISK BETWEEN TREND MICRO 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, then termination shall be in accordance with the termination provisions set out in that Private Offer. If Company selected auto-renewal of a Product via Marketplace Provider, such renewal will be at the then current fees as determined by Trend Micro at the time of renewal and such renewal will be based on the then current version of this Agreement published on the Trend Micro website which can be viewed at trendmicro.com/eula unless the Parties agree otherwise in writing.
- 9.3 **Suspension and Termination by Trend Micro:** In addition to any rights for suspension or termination that may be available via any applicable Marketplace Provider terms and policies, Trend Micro 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 Micro determines that:
- a) Company or its End Users (i) pose a security risk to Services or any third party, (ii) may adversely impact Services or any third party, (iii) is in compliance in any way with [Section 2.3](#), or (iv) may subject Trend Micro, 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 Micro in accordance with the foregoing, Trend Micro 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 Micro 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 Micro, 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 Micro (after giving Trend Micro 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 Micro 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) irretrievably destroy all copies in Company's possession or control of the Software, including any Documentation provided by Trend Micro; 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 Micro (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 Micro 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 Micro will have no responsibility or obligation hereunder or otherwise) without Trend Micro's express written consent, which may be withheld at its sole discretion. The obligation of Trend Micro under this **Section 10** for any IP Claim is subject to Company giving Trend Micro: (a) prompt written notice of any IP Claim (but in any event notice in sufficient time for Trend Micro to respond without prejudice to its position), provided that a failure to provide notice shall only relieve Trend Micro of its indemnity obligation to the extent Trend Micro 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 Micro's expense, with regard to the defense, negotiations, or settlement of such IP Claim. Trend Micro 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 Micro 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 Micro's opinion be likely to become, the subject of an IP Claim, Trend Micro 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 Micro's opinion, Trend Micro may terminate this Agreement as to such Product upon written notice and Trend Micro 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 Micro 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 Micro's sole and exclusive obligation and liability to Company, and Company's sole and exclusive right and remedy against Trend Micro for any IP Claim.**
11. **General Provisions.**
- 11.1 **Assignment.** Company will not assign (in whole or in part) this Agreement, or delegate or sublicense any of Company's rights under this Agreement, without Trend Micro's prior written consent. Any purported assignment or transfer in violation of this Section will be void. The Parties agree that Trend Micro may without consent assign this Agreement to any Trend Micro Affiliate, or delegate or sublicense the performance of Trend Micro's obligations to any Trend Micro Affiliate or to any subcontractor provided that Trend Micro shall remain responsible for the performance of such obligations by such persons as though such persons were Trend Micro. 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 that 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. Company acknowledges and agrees that it is solely responsible for the authorization and management of End User accounts, as well as export/import control and geographic transfer of Company Data in connection with the Product. Company represents and warrants to Trend Micro 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 Micro, 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 Micro 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 Micro 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 Micro website will be effective upon posting and legal notices will be effective when Trend Micro sends the email provided Trend Micro has evidence of sending. It is Company's responsibility to keep Company's email address current.
- 11.7.2 **If to Trend Micro.** To give Trend Micro legal notice under this Agreement, Company must contact Trend Micro by email to legal_notice@trendmicro.com. Trend Micro 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 **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.
- 11.9 **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 Micro'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.
- 11.10 **Supplier Ethics.** Trend Micro is committed to conducting its business free from unlawful, unethical or fraudulent activity. Trend Micro assures Company that it will act in a manner consistent with the minimum ethical and professional standards described in the Trend Micro Supplier Code of Conduct, including prompt reporting of unlawful, fraudulent or unethical conduct. Trend Micro's Supplier Code of Conduct is available upon request.
- 11.11 **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.
- 11.12 **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 **Trend Micro Contracting Entity.** The Parties agree that the Trend Micro entity that is the Party to this Agreement for each individual transaction shall be the Trend Micro entity/Affiliate that is stipulated below and such entity shall be deemed for all purposes, to be the Trend Micro Party to this Agreement and provider of Products procured by Company hereunder (in each instance, the "Contracting Entity"). The Parties agree that the governing law (without giving effect to its rules and principles relating to conflict of laws) as determined and agreed in this Section 12 shall solely and exclusively apply to and govern the subject matter of this Agreement and the Products provided hereunder. The United Nations Convention on Contracts for the International Sale of Goods does not apply to, and is specifically excluded, in any event or circumstance.
- 12.2 **Global:** Irrespective of Company's location, for any Orders of Products from Marketplace Providers, the Trend Micro Contracting Entity for use of the Product shall be Trend Micro Incorporated, a California (USA) corporation and the governing law provisions of Section 12.3 shall apply. A Private Offer may from time to time be issued by a local Contracting Entity of Trend Micro.
- 12.3 **North America:** If Company is located (as evidenced by the Certificate) in the United States of America or Canada, the Contracting Entity of Products is stipulated as: Trend Micro Incorporated, 225 E. John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA. The Parties agree that this Agreement is solely and exclusively governed by the laws of the State of New York, USA. The Parties agree that the provisions of the Uniform Computer Information Transactions Act ("UCITA"), as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this Agreement, and the Parties waive any and all rights they may have under any laws(s) adopting UCITA in any form. The Parties mutually agree to and do hereby irrevocably submit and consent to the sole and exclusive *in personam* jurisdiction of: (a) the United States District Court for the Southern District of New York, located in the County of New York, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (b) the Supreme Court of the State of New York, located in the County of New York that will have such sole and exclusive *in personam* jurisdiction over such action, matter, or proceeding. In Canada, the following language shall apply hereto: The Parties have required that this Agreement be drawn up in English and have also agreed that all notices or other documents required by or contemplated in this Agreement be written in English. *Les Parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.*
- 12.4 **Central America and South America (except Brazil, Colombia, and Mexico):** If Company is located (as evidenced by the Certificate) in Central America or South America (other than Brazil, Colombia and Mexico), the Contracting Entity of Products is stipulated as: Trend Micro MCA Inc., 225 East John Carpenter Freeway, Suite 1500, Irving, Texas 75062. The Parties agree that this Agreement is solely and exclusively governed by the laws of the State of New York, USA. The Parties agree that the provisions of the Uniform Computer Information Transactions Act ("UCITA"), as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this Agreement, and the Parties waive any and all rights they may have under any laws(s) adopting UCITA in any form. The Parties mutually agree to and do hereby irrevocably submit and consent to the sole and exclusive *in personam* jurisdiction of: (a) the United States District Court for the Southern District of New York, located in the County of New York, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (b) the Supreme Court of the State of New York, located in the County of New York that will have such sole and exclusive *in personam* jurisdiction over such action, matter, or proceeding.
- 12.5 **Brazil:** If the Contracting Entity's principal place of business is located (as evidenced by the Certificate) in Brazil, the Contracting Entity of Products is stipulated as: Trend Micro do Brasil, LTDA, Rua Prof. Atílio Innocenti, 165 – 18 Andar, CEP 04538-000, São Paulo/Capital, Brazil. The Parties agree that this Agreement is solely and exclusively governed by the federal laws of Brazil. The courts located in São Paulo, Brazil shall each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.
- 12.6 **Colombia:** If the Contracting Entity's principal place of business is located (as evidenced by the Certificate) in Colombia, the Contracting Entity of Products is stipulated as: Trend Micro Colombia, S.A.S., Cra. 11a #93 - 35 piso 8, Bogotá, Colombia. The Parties agree that this Agreement are solely and exclusively governed by the laws of Colombia. The courts located in Bogotá, Colombia shall each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.

- 12.7 **Mexico:** If the Contracting Entity's principal place of business is located (as evidenced by the Certificate) in Mexico, the Contracting Entity of Products is stipulated as: Trend Micro Latinoamérica, S. A. de C. V., Insurgentes Sur No. 730, Piso 3, Col Del Valle, C.P. 03100, México, D.F. The Parties agree that this Agreement is solely and exclusively governed by the federal laws of the Republic of Mexico. The courts located in Mexico City, Federal District, shall each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.
- 12.8 **Europe (as limited below):** If Company is located (as evidenced by the Certificate) in **European Economic Area (EEA)**, the **United Kingdom**, or **Switzerland**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro (Ireland) Limited, a company incorporated in Ireland under number 364951 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. The Contracting Entity and Company referenced in this Section 12.8 agree that this Agreement, the performance of the Parties hereunder, and all disputes arising out of or related hereto will be governed by and construed solely in accordance with the laws of Ireland. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in Ireland with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts. Each of the Parties represents and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens* in such courts.
- 12.9 **Russia, Kazakhstan, Turkey, Middle East (other than Israel and Qatar) and Africa:** If Company is located (as evidenced by the Certificate) in **Russia, Kazakhstan, Turkey, Africa, or the Middle East** (other than Israel and Qatar), the Contracting Entity of Products in all instances is stipulated as: Trend Micro DMCC, a limited liability company incorporated in United Arab Emirates having its registered office at Unit 3301, Swiss Tower, Plot No: JLT-PH2-Y3A, Jumeirah Lakes Towers, Dubai, United Arab Emirates. The Contracting Entity and Company referenced in this Section 12.9 agree that this Agreement, the performance of the Parties hereunder, and all disputes arising out of or related hereto will be governed by and construed solely in accordance with the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts. Each of the Parties represents to the other Party and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens* in such courts.
- 12.10 **Asia Pacific; Israel and Qatar:** If Company is located (as evidenced by the Certificate) in **Australia, New Zealand, India, Malaysia**, the **Philippines**, or **Thailand**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro Australia Pty Limited, Level 15, 1 Pacific Highway, North Sydney, New South Wales, 2060, Australia. If Company is located (as evidenced by the Certificate) in **Singapore, Vietnam or Indonesia**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro Singapore Pte Ltd., 6 Temasek Boulevard #16-01 Suntec Tower Four, Singapore. If company is located (as evidenced by the Certificate) in **Taiwan and Israel**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro Inc., 8F, No. 198, Tun-Hwa S. Road, Sec. 2, Taipei 106, Taiwan, Republic of China. If Company is located (as evidenced by the Certificate) in **Hong Kong SAR and Macau and/or Qatar**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro Limited, Unit 903-905, 9F, Shui On Centre, 6-8 Harbour Road, Wanchai, Hong Kong. If Company is located (as evidenced by the Certificate) in **Republic of Korea**, the Contracting Entity of Products in all instances is stipulated as: Trend Micro Inc., Korea, 15F, Haesung 2 Building, 508 Teheran-ro, Gangnam-gu, Seoul, Korea.
1. If Company is located (as evidenced by the Certificate) in **Australia or New Zealand**, this Agreement is governed by the laws of New South Wales, Australia. The Parties agree that the courts located in New South Wales shall have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter. Notwithstanding anything contained in Sections 2.6 and 7 of this Agreement, if the Australian Competition and Consumer Act 2010 ('**Act**') incorporating the Australian Consumer Law as Schedule 2 to the Act ('**ACL**') is applicable to the instant Order of Products by the Company (and not otherwise subject to an effective exclusion or waiver under Sections 2.6 and 7 of this Agreement) ('**Eligible Transaction**') and Trend Micro is in breach of the Act or a guarantee under the ACL for an Eligible Transaction, then to the extent permitted by law, Trend Micro's liability is limited at its election, to the repair or replacement of the Product or the supply of equivalent goods, or the payment of the cost of replacing the Product or having the Product repaired and to the extent that the Product is considered to be a service only under the ACL, Trend Micro may at its election, supply the Product again or pay the cost of having the Product supplied again (consistent with section 64A, and to the extent relevant, section 276A of the ACL) ('**ACL Limitations**'). Where a guarantee relates to the right to sell, quiet possession, or the encumbrance free title of the Product under the ACL, then the ACL Limitations will not apply. Without limiting the foregoing, the Company agrees that to the extent permitted by law the Consumer Guarantees Act, 1993 (NZ) ('**NZ Consumer Act**') will not apply to this Agreement (consistent with section 43 of the NZ Consumer Act). Nothing in this Agreement is intended to act as an unfair contract term under the ACL (see Part 2-3 of the ACL) ('**ACL Unfair Terms**') or under the Fair Trading Act, 1986 (NZ) ('**NZ Fair Trading Act**'). The Company acknowledges and agrees that it was given an effective opportunity to review and negotiate the terms of this Agreement and that any failure by the Company to object to a term of this Agreement on the basis that it is unfair under the ACL, the NZ Fair Trading Act or otherwise, renders that term fair and/or reasonably necessary to protect the legitimate interests of Trend Micro. Without limiting the foregoing and to the extent permitted by law, the liability of Trend Micro for any breach of the ACL Unfair Terms and/or the NZ Fair Trading Act will be limited in accordance with section 8 of this Agreement and Trend Micro reserves the right to withdraw any term of this Agreement that is deemed an unfair contract term under the ACL or the NZ Fair Trading Act by any government authority upon written notice to the Company.
 2. If Company is located (as evidenced by the Certificate) in **Hong Kong SAR or Macau SAR**, this Agreement is governed by the laws of Hong Kong SAR. The Parties agree that the courts located in Hong Kong SAR shall have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.
 3. If Company is located (as evidenced by the Certificate) in **Taiwan**, this Agreement is governed by the laws of Taiwan, without regard to its principles of conflicts of law. The Parties agree that the courts located in Taiwan shall have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.
 4. If Company is located (as evidenced by the Certificate) in **the Republic of Korea**, this Agreement is governed by the laws of the Republic of Korea. The Parties agree that the courts located in the Seoul Central District Court of the Republic of Korea shall have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.
 5. If Company is located (as evidenced by the Certificate) in **Israel**, this Agreement is governed by the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts.
 6. If Company is located (as evidenced by the Certificate) in **Singapore, India, Indonesia, Malaysia**, the **Philippines**, **Vietnam**, or **Thailand**, this Agreement and the agreement to arbitrate is governed by the laws of Singapore, without regard to its principles of conflicts of law. The following Irrevocable Mandatory Agreement to Arbitrate with respect to matters set forth in and governed by this Section 12.10.6 (only) is hereby irrevocably agreed by the Parties:
 - a. The Parties irrevocably agree that each controversy, dispute, or claim in any way arising from, pertaining to, or in connection with this Agreement, any Products, or the performance/non-performance of both or either Party (each a "**Dispute**") will be solely

and exclusively resolved by mandatory and binding arbitration that is administered by Singapore International Arbitration Center ("SIAC") which will be held and conducted in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") on the Publication Date. The arbitration award will be final and binding for the Parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law. In arriving at their award, the arbitrators shall make every effort to find a solution to the Dispute in the language of this Agreement and shall give full effect to all provisions hereof. However, if a solution cannot be found in the language of this Agreement, the arbitrators shall exclusively apply the substantive law of Singapore existing on the Publication Date hereof and are specifically divested by the Parties of any power or authority to: (i) apply any principles that would permit them to ignore this Agreement, or (ii) apply the law of any jurisdiction other than Singapore.

- b. The number of impartial arbitrators will be three (3), with each Party being entitled to appoint one arbitrator. The 2 arbitrators appointed by the Parties will appoint a third arbitrator (who must be a lawyer with a multinational law firm and have a minimum of 10 years of experience in the field of computer software development, licensing, and distribution) who will act as chairman of the proceedings, or if no agreement is reached by such arbitrators within 20 days of the last to be appointed, then the post of chairman will be filled by the president of SIAC at the request of either Party. Vacancies in the post of chairman will be filled by the president of SIAC in accordance with the SIAC Rules. Other vacancies will be filled by the respective nominating Party. Proceedings will continue from the stage they were at when the vacancy occurred.
- c. If one of the Parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other Party appoints its arbitrator, the Parties irrevocably agree that the first appointed arbitrator will be the sole arbitrator, provided that such arbitrator was validly and properly appointed in accordance with the SIAC Rules unless such sole arbitrator appointment shall be void or voidable under SIAC Rules, in which event a sole arbitrator having the qualifications of the chairman will be appointed by the president of SIAC in accordance with the SIAC Rules.
- d. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

12.11 **Other Countries in the Territory Not Listed Above.** If Company is located in any country or region not listed in any other subsection of this Section 12 (as evidenced by the Certificate), the Contracting Entity of Products in each instance is stipulated as the Trend Micro Affiliate stated in the Certificate. In each such instance, the Parties agree that this Agreement, the performance of the Parties hereunder, and all disputes arising out of or related hereto will be governed by and construed solely in accordance with the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts of England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts. Each Party represents to the other and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue.

12.12 **Provisional Remedies; No Waiver.** Notwithstanding the Parties agreement to arbitrate in Sections 12.10.6, a Party may apply at any time to any court or courts having jurisdiction over the relevant Party or Parties for an order (that is NOT dispositive or final of any Dispute), including, but not limited to, an *ex parte* temporary restraining order, temporary injunction proceedings, or other provisional or interim/ancillary remedies or equitable relief (each a "Temporary Action") seeking protection: (1) of its Confidential Information provided hereunder as described in Section 6; or (2) from a breach of or non-compliance with any Product grant in Section 2 of this Agreement or from infringement, misappropriation, or a violation of such applying Party's intellectual property rights forming a part of any Product or otherwise, including any and all rights protectable under intellectual property laws anywhere in the world such as (by way of example) patent, copyright, trade secret, and trademark law; *provided, however*, no such Temporary Action shall be a final disposition of any matter to be submitted to arbitration nor shall it compromise, limit, or avoid the sole and exclusive right of the arbitrators to decide and finally dispose of all Disputes subject to arbitration hereunder, including, without limitation, granting temporary or permanent relief of the subject of any request for Temporary Action. The institution and maintenance of a Temporary Action shall not be deemed an election of remedies or constitute a waiver or abrogation (in whole or in part) of the agreed right and obligation of each Party, including the plaintiff in any arbitration or Temporary Action, to submit each and every Dispute to arbitration, nor supersede or render inapplicable (all or in part) the agreed compulsory arbitration provisions of this Agreement.

End of Agreement