

**1. Not a Master Purchase Agreement; Agreed Definitions.**

**1.1 Reserved**

**1.2 Not a Master Purchase Agreement.** Ordering Activity acknowledges that this is NOT a master purchase agreement for subsequent purchases of Products, but rather, this Agreement and the underlying GSA Schedule Contract, Schedule Pricelist and applicable purchase order only applies to each instant purchase/license of Products by Ordering Activity. Each subsequent procurement/license of Products by Ordering Activity will be made subject to and conditioned on the agreement of the Parties to the then-current version of this Agreement unless otherwise agreed in a writing signed by the Parties.

**1.3 Procurement Under This Agreement.** Ordering Activity may secure Products under this Agreement by:

a. Procurement Through a Reseller. Reseller will provide to Ordering Activity a Quote based on prices set out in the Schedule Price List. Ordering Activity understands that if an Order is placed with a Reseller, the Reseller can place an order with Trend Micro for Products (either directly through Trend Micro or through a Trend Micro distributor) as requested by Ordering Activity. Except for the matters agreed in the first sentence of this paragraph between the Reseller and Ordering Activity, all other rights, obligations, terms, conditions, limitations, and exclusions regarding Products that are Ordered by Ordering Activity are exclusively set forth in this Agreement. All payments by Ordering Activity for Products will be made directly to the Reseller and never to Trend Micro. Ordering Activity acknowledges that each Reseller is an independent contractor and in no event or circumstance will any Reseller now or hereafter be deemed a joint venturer, partner, fiduciary, or agent of Trend Micro and NO Reseller has been or will be authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, warranty, guaranty, or any otherwise contract for or act on behalf of Trend Micro or waive or renounce any right of Trend Micro or modify any right, obligation, or agreement of Ordering Activity set forth in this Agreement.

b. Reserved

**1.4 Agreed Definitions.** In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in this Agreement (that include all policies, procedures, and Trend Micro websites made a part hereof) that are referenced/incorporated herein, the initially capitalized definitions, descriptions, and clarifications shall have the meanings set forth in this Section 1.4 (each is an “**Agreed Definition**”) and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

“**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 fifty percent (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.

“**Appliance**” means a hardware-based appliance designed and provided by Trend Micro as a Product that inseparably combines Hardware and Integrated Software to form a single purpose, unified device that provides capabilities, features, and functionalities as set forth in its Documentation. The Hardware portion of an Appliance may be sold, leased, rented, or loaned hereunder, whereas the Integrated Software portion of an Appliance is only licensed and never sold. Deep Discovery family of Appliances; ATP family of Appliances; Network VirusWall Enforcer family of Appliances; and TippingPoint family of Appliances are examples of Appliances available on the Effective Date of this Agreement.

“**Appliance Differing Terms**” shall have the meaning set forth in Section 4.

“**Applicable Laws**” 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 data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

“**Communications**” shall have the meaning set forth in Section 9.

“**Ordering Activity**” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts.

“**Computer**” means a Virtual Machine or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, including without limitation mainframes, Servers, workstations, desktop computers, laptops, tablets, mobile devices, telecommunication devices, Internet-connected devices, and hardware products capable of operating a wide variety of productivity, entertainment, business, security, and/or other software applications.

“**Confidential Information**” shall have the meaning set forth in Section 10.

“**Contractor**” is an independent contractor that provides services in support of Ordering Activity and/or its Affiliates with respect to any Products provided hereunder pursuant to a written agreement between such person and Ordering Activity that imposes an obligation (among other obligations) on such Contractor to fully comply with this Agreement to the extent of access to, possession of, and/or use of any Product by such person. Such Contractor (and its services) may include, but are not limited to, Contractors: (a) that provide business process support, technical support, or outsourcing services to Ordering Activity; or (b)

such as AWS, Microsoft Azure, Google Marketplace/Launcher, SoftLayer, and/or Rackspace that: (i) act as host or platform for Standalone Software that was Resold by such Contractor to Ordering Activity, but licensed to Ordering Activity hereunder; and/or (ii) act as host or platform for Standalone Software licensed to Ordering Activity hereunder that was originally acquired by Ordering Activity from a different Reseller (not the Contractor) or Trend Micro, all of the foregoing for the sole access, use, and benefit of Ordering Activity and/or its Affiliates in accordance herewith.

“**Controlled Technology**” shall have the meaning set forth in Section 17.

“**Delivery Date,**” “**Delivered,**” and “**Delivery.**” The Delivery Date shall be: (a) for Software, it is the date that Software is made available by Trend Micro for electronic download by Ordering Activity, and/or (b) for Hardware, the date of actual shipment to Ordering Activity, but some Appliances may be subject to different delivery terms as notified by Trend Micro. All Products and Maintenance will be deemed for all purposes to be Delivered in the country of Trend Micro’s place of business stated in the License Certificate.

“**Different Terms**” shall have the meaning set forth in Section 3.

“**Documentation**” means the printed, electronic, and online technical documentation and operating instructions generally made available by Trend Micro for Products provided for the purpose of supporting Ordering Activity’s internal business use of such Products as authorized in Section 2.1.

“**Government Agency**” shall have the meaning set forth in Section 18.

“**Hardware**” means the hardware product that Integrated Software is embedded in or preloaded on by Trend Micro and sold as an Appliance and all Documentation therefor.

“**Instance**” means an image of software on a physical device or Virtual Machine that is created by executing the software’s setup or install procedure or by duplicating an existing Instance.

“**Integrated Software**” means the object code version of any Trend Micro-published/branded applications software that is embedded in or preloaded on Hardware by Trend Micro to form an Appliance. Integrated Software is licensed hereunder (and no right, title, or interest therein is sold) for a Subscription Period that is no longer than the life of the Appliance and is not re-deployable to replacement Hardware except as may be specifically permitted herein.

“**IP Claim**” means any suit, cause of action, or other legal proceeding filed/brought against Ordering Activity by a third party in the courts of law, equity, or otherwise ONLY in the Territory, that asserts that Software licensed hereunder directly infringes any patent, copyright, and/or trademark of such third party.

“**License Certificate**” means a written (electronic or otherwise) acceptance/entitlement confirmation issued by Trend Micro to Ordering Activity with the license/purchase of Products that confirms to Ordering Activity the Products purchased by Ordering Activity, including the applicable Licensed Capacity where applicable. The License Certificate and this Agreement forms the entire agreement between Trend Micro and Ordering Activity with respect to each Order of Products that is accepted by Trend Micro. Ordering Activity is advised to retain the License Certificate as proof of its entitlement to such Products.

“**Licensed Capacity**” is defined (includes quantity, licensing metric, and term of license) as and notified in the License Certificate each time Standalone Software is licensed hereunder, the number of licenses of each type of Standalone Software that Ordering Activity purchases from time-to-time and is then-validly licensed to Ordering Activity under this Agreement, based upon Trend Micro’s licensing measurement for each particular Standalone Software. The applicable licensing metrics/measurements (which may include measurement by Computer/CPU, Virtual Machine, device, node, Instance, Server, and user, as applicable) available to Ordering Activity for Standalone Software licensed hereunder will be determined and published by Trend Micro from time-to-time for each Product at [https://www.trendmicro.com/en\\_us/about/legal/licensing-metrics.html](https://www.trendmicro.com/en_us/about/legal/licensing-metrics.html).

“**Licensing Entity**” shall have the meaning set forth in Section 23.

“**Maintenance**” of Software shall have the meaning and description set forth in Section 5. The term Maintenance for Software does not include any PSP services or other premium, enhanced, technical, or engineering support services that may be provided by Trend Micro pursuant to a separate agreement or statement of work for additional compensation. Any maintenance or support of Hardware shall have the meaning and description set forth in applicable Appliance Differing Terms referenced in Section 4.

“**Non-Production Environment**” means Ordering Activity’s use of an Appliance and/or Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“**Order**” means: (a) a purchase order or other ordering document issued by Ordering Activity in response to a Quote.

“**Party**” means only each of the persons entering into this Agreement and all other persons such as Affiliates and Contractors of each Party are third parties without rights or benefits hereunder.

“**Perpetual Period**” means a license granted for Standalone Software that extends for an indefinite period of time, subject to earlier termination in accordance herewith. For the avoidance of doubt, Standalone Software licensed for a Perpetual Period never includes a payment for, or a right to receive without additional fees or compensation, Maintenance for the entire Perpetual Period.

“**Products**” means and includes Software, Appliances (including Hardware), and Maintenance that is licensed/purchased hereunder, but does NOT include Trend Micro “software-as-a-service” and “cloud-based” service offerings that are provided under separate agreement.

“**Quote(s)**” means one or more documents issued by Trend Micro or its Reseller (as the case may be) to Ordering Activity specifying the Software, Appliance, and/or Maintenance that Ordering Activity seeks to obtain, the related pricing, payment terms, and Licensed Capacity and sufficient other information to complete the transaction. Each Quote shall incorporate this Agreement (specifically or by reference) as the sole basis and governing document for any procurement by Ordering Activity based on the Quote.

“**Reseller**” means a reseller, system integrator, service provider (such as AWS that hosts or provides platform services with respect to Software resold by it subject to this Agreement), independent software vendor, VAR, OEM or other channel partner that is authorized by Trend Micro or its distributor to secure orders for the license/sale of Products to end users, including Ordering Activity.

“**Separate Modules**” means any plug-in or module for Software that Trend Micro determines to be new or a different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration. Separate Modules are not included with Maintenance or Updates to existing Software.

“**Server**” means a computer or device (and deployed software) on a network that provides functionality, management, and/or support for other devices and/or other network resources, such as a web server, file server, a database server, or a print server.

“**Software**” means the object code version of Integrated Software, Standalone Software, and Test Software and includes all Documentation and Updates thereto made available to and purchased by Ordering Activity. In no event or circumstance will a source code version of any Software be offered, licensed, or otherwise provided hereunder to Ordering Activity.

“**Software Limited Warranty**” shall have the meaning set forth in [Section 11](#).

“**Standalone Software**” means the object code version of any applications software (and Updates thereto) that is published by and is generally made available for license from Trend Micro hereunder that does not include any Hardware, nor is it licensed by Trend Micro as part of an Appliance. Standalone Software also includes Instances thereof that are licensed for deployment in a Virtual Machine environment.

“**Subscription Period**” means, only if available from Trend Micro for a specific version of Software, the limited term/increment of time (*i.e.*, not a Perpetual Period) that the Software is licensed for use by Ordering Activity. Such Subscription Period may be offered by the week, month, or year (not to exceed three (3) years), during which period, the licensee has the right to use the Software (and receive Maintenance without additional cost) in accordance herewith. After expiration of the Subscription Period, a new Subscription Period or Perpetual Period license must be purchased in order to continue the use of the expired Software. [Integrated Software](#) is always licensed for the limited Subscription Period that expires and terminates at the end of such Subscription Period, unless such license is earlier terminated in accordance with this Agreement such as when the unit of Appliance on which such Software was originally installed is no longer deployed and used in accordance with the Appliance’s Documentation.

“**Territory**” means worldwide other than Japan, subject always to and limited by the terms, conditions, waivers, limitations, disclaimers, and exclusions in this Agreement, and present and future Applicable Laws that applies to the Products and/or the performance of either Party hereunder that prohibits or restricts Product sale, use, or access: (a) to certain technology/goods/services; (b) to specified countries; and/or (c) by defined persons.

“**Test Period**” shall have the meaning set forth in [Section 7.1](#).

“**Test Software**” shall have the meaning set forth in [Section 7.1](#).

“**Test Use**” or a “**Test**” shall have the meaning set forth in [Section 7.1](#).

“**Third Party Technology**” shall have the meaning set forth in [Section 3](#).

“**Trend Micro**” means in each instance that Products are acquired under this Agreement, the Licensing Entity that provides Products in such instance as determined by application of [Section 23](#).

“**Virtual Machine**” means a software container, implementation, or emulation of a Computer (*i.e.*, a physical device) that runs its own operating system and executes application programs like a physical Computer.

“**Updates**” means and includes if and when generally made available by Trend Micro with respect to Software licensed hereunder that is also then-subject to paid Maintenance, new object code versions (including patches) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, websites, or other forms of computer abuse generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, revisions, patches, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, structures, and/or functionality that Trend Micro makes available to existing customers that have then-purchased Maintenance for such Software; *provided, however*, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies

of the updated Software and will not increase the units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.

## **2. Software License; Right to Copy; Limitations**

**2.1 Software License.** Products are protected by patent, copyright, trade secret, and/or other worldwide intellectual property Applicable Laws. On the terms and subject to Ordering Activity's continuous compliance with the conditions set forth in this Agreement (including the License Certificate) and on the condition precedent of Ordering Activity making payment as directed in [Section 1.3](#), Trend Micro hereby grants only to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in [Section 2.5](#)), a non-exclusive, non-transferable (except as may be required in the European Union under mandatory Applicable Laws that do not permit a written waiver or limitation), non-assignable (by operation of law or otherwise), and revocable (in accordance herewith) right and license (with no right to sublicense) in the Territory to: (a) install or have installed (on Computers owned by or under the control of Ordering Activity through written agreement with a Contractor), access, and use Standalone Software only as permitted in its Documentation, each of the foregoing for the stated Subscription Period (unless the License Certificate states that such Standalone Software is being licensed for a Perpetual Period) and in such Licensed Capacity as is listed in the License Certificate; or (b) use Integrated Software (only as permitted in its Documentation) forming a part of any Appliance purchased hereunder only for such limited time (not for a Perpetual Period) as it forms a part of the unit of Appliance that it is originally shipped by Trend Micro to Ordering Activity.

**2.2 Right to Copy.** Ordering Activity shall have the right to reproduce, without additional cost, a commercially reasonable number of copies of the Standalone Software (in an unmodified form) and its Documentation that is licensed to Ordering Activity only for backup/failover, archive, and/or training purposes, *provided* that Ordering Activity reproduces on or in such copies any and all of the copyright, trademark, patent, and other proprietary notices or markings that appear on the original copy of the Standalone Software (and Documentation). No copy of Standalone Software will be utilized for production purposes (other than backup/failover testing or archive retrieval) except for such time as the production copy of such Standalone Software is not being utilized for production use.

**2.3 Limitations/Conditions.** Except as may be specifically granted hereunder by license to Ordering Activity in this Section 2 or to the extent prohibited by or inconsistent with any Different Terms licensing Identified Components to Ordering Activity, Ordering Activity agrees that it is not licensed hereunder to and as a condition hereunder, will not (or otherwise allow third parties to): (a) modify, adapt, alter, translate, or create derivative works (as defined under Applicable Laws) from any part of any Software (or its Documentation) or authorize others to undertake any of the foregoing prohibited acts; (b) merge or embed any Software with or in other software, sub-routines, or other binary code segments; (c) reverse engineer, reverse compile, decompile, or disassemble any Product or object code thereof, or otherwise attempt to decrypt, decode or discover the source code or underlying ideas or algorithms of any Software or part thereof, including but not limited to sub-routines, functions, libraries or other binary code segments of Software except and only to the minimum extent required to be permitted with respect to interoperability under mandatory Applicable Law without the possibility of waiver; (d) distribute, license, sublicense, lease, sell, rent, loan, mortgage, encumber, auction, or otherwise transfer or provide a copy of any Software (or components thereof including any license or access key or authorization) to any third party; (e) publish, provide, or otherwise make available to any third party, any competitive, performance, or benchmark tests or analysis relating to the Software without the written permission of Trend Micro which may be withheld or conditioned at the sole discretion of Trend Micro; (f) deploy or use Software or Appliance in any manner other than as expressly permitted in its Documentation; (g) permit any third party to use or benefit from the use or functionality of any Product (alone or in combination with any other product or service) via, for instance, third party outsourcing facility or service, service bureau arrangement, time sharing basis, or as part of any other hosted or platform service that permits either access to or use of any Products, whether on a specific fee basis or otherwise; or (h) attempt to do any of the foregoing. Ordering Activity understands and agrees that all Software and Appliances are subject to End-of-Maintenance/Support policies forming a part of Trend Micro's policies referenced in [Sections 4 and 5](#) below.

**2.4 Ownership.** The Parties understand and agree that all Software is licensed and not sold hereunder. The Parties agree that, as between the Parties, all Software and its Documentation, and all worldwide intellectual property rights therein or related thereto, are the exclusive property of Trend Micro, its Affiliates, and/or its or their licensors/suppliers. All rights in and to Software not expressly granted to Ordering Activity in this Agreement are reserved by Trend Micro and Ordering Activity will have no other or different rights (implied, by estoppel, or otherwise) or privileges with respect to any Software. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Trend Micro's existing or future patents or other intellectual property rights. Trend Micro reserves the right to take any and all reasonable steps to prevent unauthorized access to, and use of, Software by any person.

**2.5 Affiliate and/or Contractor Use.** For no more than the Licensed Capacity purchased by or on behalf of Ordering Activity as evidenced in a License Certificate, Trend Micro grants Ordering Activity the right to authorize and permit (for no additional fees or amounts due Trend Micro other than the fees already payable with respect to licenses purchased by Ordering Activity): (a) Ordering Activity's Affiliates to access, deploy, and/or utilize Products only in connection such Affiliate's internal business operations for so long as such person remains an Affiliate of Ordering Activity; and (b) Contractors to Ordering Activity and/or its Affiliates to access, install, deploy, and/or utilize Products only in connection with the provision of services to and solely for the use and benefit of Ordering Activity and/or Affiliates in connection with its and their internal business operations and not for the benefit of any third party or such Contractor, all of the foregoing on the terms and subject to the limitations and conditions of this Agreement. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Product will be considered an authorized user of Ordering Activity under this Agreement with respect to such Product and NOT a separate or additional licensee or otherwise having any rights or deemed to be a third party beneficiary hereunder in any

event or circumstance. Ordering Activity agrees at all times to require, ensure, and enforce compliance with the grants, terms, conditions, and limitations set forth in this Agreement by Ordering Activity's Affiliates and/or Contractors having access to Products procured hereunder and, further, Ordering Activity agrees that it shall at all times be and remain legally and financially responsible to Trend Micro for the compliance and non-compliance with, or breach of, this Agreement caused by any Affiliate or Contractor. For the avoidance of doubt, since all Maintenance is to be provided by Trend Micro only to Ordering Activity, no Affiliate and/or Contractor will be entitled to request or receive Maintenance directly from Trend Micro.

**2.6 Use Exclusions.** Products are not fault-tolerant/fail-safe and are not designed, intended, suitable, or licensed hereunder for use, and may not be used, in situations or environments requiring extra safety features or functionality for fail-safe or fault-tolerant performance, such as: (a) the design, construction, operation, or maintenance of any nuclear facility, civil infrastructure, manufacturing facilities, or industrial plants; (b) aircraft navigation, communications, or operating systems; (c) air traffic control systems; (d) operation of life-support or life-critical medical equipment; or (e) any other equipment or systems in which the circumvention, unavailability, inaccuracy, ineffectiveness, or failure of the Product could lead or contribute to death, personal injury, or physical property/environmental damage, and Trend Micro specifically excludes any right or license for any such use and disclaims any express or implied warranty/guarantee of fitness for any such use. Only as may be specifically set forth in the Documentation therefor, Trend Micro notifies Ordering Activity that no Product has been submitted for compliance testing, certification, or approval for any use by any governmental agency or consensus organization.

**3. Open Source and Third Party Technology.** The Software may come bundled or otherwise be distributed with open source or other third party software (herein "**Third Party Technology**"), that may be subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each "**Different Terms**"). Ordering Activity agrees to be bound only to the terms contained herein unless the Ordering Activity executes an agreement in writing with a third party vendor.

**4. Appliances.** Several Products available hereunder are Appliances. As such, each Appliance has certain terms and conditions applicable thereto that are in addition to, or different than, those set forth herein (all are "**Appliance Differing Terms**"). In the event Ordering Activity is licensing/acquiring/leasing/renting/testing/evaluating an Appliance hereunder, Ordering Activity agrees that the applicable Appliance Differing Terms are incorporated herein by reference and made a part hereof for all purposes. Appliance Differing Terms may include, among other things: a modified and/or different license grant and/or Maintenance for the Integrated Software that forms a part of the Appliance; Hardware warranty and ownership; and/or a description of available maintenance and support for Hardware and the Appliance in general. In the event of conflict between the terms and conditions in the body of this Agreement, and those Appliance Differing Terms, the applicable Appliance Differing Terms shall govern and control. Appliance Differing Terms are set forth in Exhibit A below.

**5. Maintenance.** All Standalone Software licensed for a limited term Subscription Period by Trend Micro includes paid Maintenance in the price of the license for the entire Subscription Period that is purchased by Ordering Activity. However, Standalone Software licensed for a Perpetual Period hereunder includes Maintenance only for a period of one (1) year from Delivery of the Standalone Software, thereafter, additional Maintenance then-offered by Trend Micro may be purchased for Standalone Software in one (1) year increments. The description of Maintenance and Trend Micro's policies with respect to Standalone Software are set forth below in Exhibit B. The description of Maintenance and Trend Micro's policies with respect to Integrated Software are set forth in the Appliance Differing Terms in Exhibit A.

**6. Applicable Laws.** To the extent applicable to Ordering Activity's performance of its obligations and/or exercise of its rights hereunder, Ordering Activity represents (on an ongoing basis) and warrants to Trend Micro and agrees that Ordering Activity will: (1) comply with all Applicable Laws; and (2) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable in order to comply with Applicable Laws with respect hereto. If Ordering Activity at any time is in breach of or non-compliance with this Section, Ordering Activity will promptly (at no cost Trend Micro) do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any Applicable Laws.

**7. Test/Evaluation of Appliances and/or Software.**

**7.1 Test/Evaluation.** If Standalone Software or Integrated Software is provided to Company under this Agreement that has been identified by Trend Micro as "Evaluation," "Proof-of-Concept," "Trial," or "Test" Software (each "**Test Software**"), then the provisions of this Section 7 shall apply thereto and shall supersede any conflicting term or condition of this Agreement. In each of the foregoing instances, Company is granted a royalty-free, non-transferable, limited license to install the Test Software on Computers located in the country of Delivery and owned (unless an Appliance is provided by Trend Micro in connection with Test Use) by Company and only use the Test Software for evaluation of such Test Software in a Non-Production Environment (a "**Test Use**" or a "**Test**") that is limited to thirty (30) days from the date the Test Software is Delivered to Company (or on the date that an Appliance is shipped to Company by Trend Micro for a Test) unless otherwise agreed in writing by Trend Micro (the "**Test Period**"). Sections 2.1, 2.2, and 2.5 of this Agreement do not apply to Test Software, but Sections 2.3, 2.4, and 2.6 do apply to Test Software. If the Test Use involves an Appliance (and Integrated Software), the Parties agree that the applicable Appliance Differing Terms below in Exhibit A, sets forth additional and/or different terms and conditions that are applicable to the Appliance and the Integrated Software that forms a part of that Test Use Appliance. During the Test Period, Company may be able to receive web or email based technical support in the country where Company is located, but otherwise support is not generally available for Test Software or Appliances.

**7.2 Exclusion; Limitation of Liability for Test Software.** TEST SOFTWARE MAY CONTAIN ERRORS OR OTHER PROBLEMS THAT COULD CAUSE SYSTEM OR OTHER FAILURES AND DATA LOSS. CONSEQUENTLY, TEST SOFTWARE IS PROVIDED TO COMPANY "AS IS, WITH ALL FAULTS." TREND MICRO SPECIFICALLY

DISCLAIMS AND EXCLUDES ANY WARRANTY, GUARANTEE, AND/OR LIABILITY TO COMPANY OF ANY KIND OR NATURE WITH RESPECT TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THIS DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THIS AGREEMENT RELATED TO TEST SOFTWARE AND ANY APPLIANCE ON WHICH THE TEST SOFTWARE IS DEPLOYED, SHALL BE LIMITED IN THE AGREEGATE TO THE SUM OF FIVE HUNDRED DOLLARS (USD\$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY. Any information about the Test Software gathered from its access or use shall be used solely by Company for the test/evaluation and such information shall not be provided to any third party. Notwithstanding anything contained herein, each Party has the right to terminate any Test Use and the license herein granted at any time with or without reason with five (5) days prior written notice to the other Party. Upon expiration of the Test Period or earlier termination as set forth in this Section 7.2, Company agrees to immediately stop using the Test Software and uninstall, delete, and irretrievably destroy all copies of the Test Software and Documentation including those that may be included in any backup or archive files and shall promptly confirm same to Trend Micro in writing.

**8. Reserved.**

**9. Consent to Electronic and Other Communications.** Ordering Activity agrees that Trend Micro may send Ordering Activity required legal notices and other communications about Products (including Updates), other and/or new Trend Micro products and services, special offers and pricing or other similar information, customer surveys, and other requests for feedback (collectively "**Communications**"). Trend Micro may provide Communications via (among other methods): (a) in-person contacts by Trend Micro and/or Reseller personnel; (b) in-Product notices or email to registered email addresses of named Ordering Activity contacts; and/or (c) posted Communications on its Websites. By accepting this Agreement, Ordering Activity consents to receive all Communications through these means.

**10. Reserved.**

**11. Limited Warranty – Software.**

**11.1 Limited Warranty.** Trend Micro warrants to Ordering Activity only that on the initial Delivery Date of any Software licensed under this Agreement and for thirty (30) days after the Delivery Date therefor, that such Software when installed on compliant/compatible hardware and only as permitted in and in accordance with its Documentation, will substantially conform to its Documentation (the "**Software Limited Warranty**"). Any replacement of non-conforming Software will be warranted for the remainder of its original Software Limited Warranty period. In the event that any Software does not comply with the foregoing warranty and such non-compliance is notified to Trend Micro within the warranty period, and if Trend Micro is unable to bring any Software into conformity with the Software Limited Warranty after using commercially reasonable efforts, either Ordering Activity or Trend Micro may (at the discretion of each) immediately terminate this Agreement for convenience (by giving written notice no later than ten (10) days after the end of the Software Limited Warranty Period) only as to the non-conforming Software. In the event the license is terminated as aforesaid, the license granted to Ordering Activity to such Software shall immediately terminate. Upon receipt of Ordering Activity's certification that it has irretrievably destroyed such terminated Software, Trend Micro shall refund to Ordering Activity all fees paid by Ordering Activity for the affected Software. The applicable limited warranty provided by Trend Micro with respect to Integrated Software forming a part of an Appliance is available as directed in Section 4.

**11.2 Warranty Exclusions.** The Software Limited Warranty provided in this Section 11 does not apply to and shall be void: (a) in the event of failure of any Software 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 the Software is installed and is designed to operate; (b) if any problem or error in the Software has resulted from improper use, misapplication, or the use of the Software with other programs or services that have similar functions or features which are incompatible with the Software; (c) is licensed as Test Software for which Trend Micro does not charge a royalty or license fee; or (d) if Trend Micro does not receive notice of a non-conformity within the applicable warranty period.

**11.3 Exclusive Remedy.** The Parties agree that the rights, obligations, and remedies of the Parties in this Section 11 are in lieu and satisfaction of any right of acceptance/rejection of any Software that Ordering Activity may have under Applicable Law and Ordering Activity hereby waives and renounces any right of acceptance/rejection of all Software, it being understood that Ordering Activity is relying upon its rights under this Section 11. The Parties agree that the warranties and remedies with respect to Software and Maintenance set forth in this Section 11 shall constitute Trend Micro's sole and exclusive obligation and liability and Ordering Activity's sole and exclusive right and remedy for the breach of or Software non-conformance with the Software Limited Warranty herein granted for any Software. ORDERING ACTIVITY UNDERSTANDS AND AGREES THAT TREND MICRO CANNOT, AND DOES NOT HEREIN, PROVIDE ANY ASSURANCE/GUARANTEE THAT THE DEPLOYMENT/USE OF ANY SOFTWARE (EITHER BY ITSELF OR IN COMBINATION WITH OTHER TREND MICRO PRODUCTS) WILL GUARANTEE/ASSURE COMPLETE/PERFECT PROTECTION FROM AND AGAINST ALL PRESENT AND FUTURE SECURITY THREATS TO ORDERING ACTIVITY'S NETWORKS, SYSTEMS, DEVICES, AND/OR DATA AND NOTHING HEREIN THIS AGREEMENT SHALL BE DEEMED TO IMPLY SUCH A GUARANTEE OR ASSURANCE.

**11.4 Disclaimer of All Other Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, ORDERING ACTIVITY AGREES THAT TREND MICRO PROVIDES SOFTWARE "AS AVAILABLE" AND "AS IS, WITH ALL FAULTS" AND WITHOUT ANY OTHER WARRANTY OR GUARANTEE OF ANY KIND. TREND MICRO (ON BEHALF OF ITSELF AND ITS SUPPLIERS/LICENSORS/RESELLERS) EXPRESSLY DISCLAIMS ANY CONDITIONS AND WARRANTIES (WHETHER STATUTORY, EXPRESS OR IMPLIED) OF:

MERCHANTABILITY; FITNESS FOR A PARTICULAR OR GENERAL PURPOSE; TITLE; QUALITY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR OTHERWISE ARISING FROM A STATUTE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER; OR ANY WARRANTY AGAINST INTERFERENCE WITH ORDERING ACTIVITY'S QUIET ENJOYMENT OF ANY SOFTWARE. ORDERING ACTIVITY UNDERSTANDS AND AGREES THAT TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT: (a) SOFTWARE WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (b) THE FUNCTIONS AND FEATURES CONTAINED IN SOFTWARE WILL MEET THE REQUIREMENTS OF ORDERING ACTIVITY OR THAT SOFTWARE WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS OF ORDERING ACTIVITY; (c) SOFTWARE, UPDATES THERETO, OR MAINTENANCE THEREOF ARE FREE OF DEFECTS, PROBLEMS, BUGS, AND ERRORS OR THAT ALL DEFECTS, PROBLEMS, BUGS OR ERRORS WILL BE DETECTED OR CORRECTED; (d) SOFTWARE WILL DETECT ONLY, ANY, OR ALL SECURITY OR MALICIOUS CODE THREATS; OR (e) USE OF SOFTWARE AND UPDATES WILL KEEP ORDERING ACTIVITY'S NETWORKS OR COMPUTER SYSTEMS FREE FROM ALL VIRUSES OR OTHER MALICIOUS/UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY ATTACKS/BREACHES.

**12. Reserved.**

**13. Reserved.**

**14. Privacy; Security Update.**

**14.1 Privacy.** By using any Product or in connection with any Trend Micro Maintenance, Ordering Activity will cause certain information about Products and systems on which Products are deployed to be sent to Trend Micro owned/controlled servers strictly to improve services and functionality of the Software (*e.g.*, to improve security scanning, malware identification and threat protection). Further information about what Trend Micro does with, and how it protects, certain information that Ordering Activity provides to Trend Micro is set forth in the Trend Micro Privacy Policy below in **Exhibit C**. Except where not permitted under mandatory Applicable Law in the European Economic Area (EEA), Ordering Activity hereby consents to the use and disclosure of its data in accordance with the Privacy Policy.

**14.2 Security Acknowledgement.** Trend Micro does not warrant or guarantee that Products will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Ordering Activity does not use or want. Ordering Activity agrees that the success of security efforts and the operation and protection of its Computers, networks, and data are dependent on factors solely under Ordering Activity's control and responsibility, including, but not limited to: (a) the design, implementation, deployment, and use of hardware and software security tools in a coordinated effort to manage security threats; (b) the selection, implementation, and enforcement of appropriate internal security policies, procedures and controls regarding access, security, encryption, use, and transmission of data; (c) development of, and ongoing enforcement of, processes and procedures for the backup and recovery of any system, software, database, and any stored data; and (d) diligently and promptly downloading and installing all Updates to Products made available to Ordering Activity.

**15. Assignability/Severability.** Ordering Activity and Trend Micro may not assign all or any portion of this Agreement, whether by contract, operation of law or otherwise, to any person, including any Affiliate, without written approval from the other party in accordance with the procedures for securing such approval are set forth in FAR 42.1204. Ordering Activity agrees that if a court or other competent tribunal in any jurisdiction finds any provision of this Agreement invalid, such finding shall not affect any other provisions of the Agreement, which shall remain in full force and effect.

**16. Waiver; Severability; Enforcement.**

**16.1 Waiver.** A Party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the Party agreeing to the waiver.

**16.2 Severability; Enforcement.** The unenforceability of any provision or provisions of this Agreement shall not impair the enforceability of any other part of this Agreement. In the event that any provision of this Agreement conflicts with the governing law under which this Agreement is to be construed or if any such provision is held invalid or 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 as nearly as possible the original intentions of the Parties. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable in accordance herewith.

**17. Export/Import Control.** The export or re-export of Software (and related technical data and services) and/or an Appliance (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 Ordering Activity and/or its Affiliates. Ordering Activity agrees that it will at all times comply with each Applicable Law (now or hereafter in effect) that applies to direct/indirect export, re-export, or import of Controlled Technology by Ordering Activity and/or its Affiliates and/or the performance of Ordering Activity and/or its Affiliates hereunder that: (1) requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; (2) prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or (3) restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Ordering Activity represents and warrants to Trend Micro that neither Ordering Activity nor any of its Affiliates 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 entity as defined in any Applicable Law.

**18. Government Agency Use.** All Products (including Software and Appliances) and accompanying Documentation have been developed solely at private expense by Trend Micro and/or its suppliers/licensors, consisting of commercially-available computer software, commercially-available hardware and appliances, and commercially-available documentation. The acquisition, deployment, duplication, disclosure, and use of Software (as Updated) by any Government Agency may be subject to mandatory Applicable Laws, *however*, except for the limited license granted in Section 2 above to any Software, no right, title, or interest in or to any Software (or Updates and Documentation) is granted or transferred hereunder to any Government Agency licensing such Software. If any Government Agency requires or needs greater or different rights in or to Software other than those rights that are granted in Section 2, the Parties will discuss such additional requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the Parties will enter into a specific written agreement with respect thereto. In this Section, “**Government Agency**” shall mean a national, Federal, provincial, state, municipal, and/or local agency or entity in the Territory that acquires Products from Trend Micro under this Agreement for use by such Government Agency.

**19. WEEE Directive.** Trend Micro complies with the WEEE regulations. For information on the disposal of electronic waste, visit <http://uk.trendmicro-europe.com/recycle>.

**20. Reserved.**

**21. No Third Party Beneficiaries.** This Agreement is entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. This Agreement does not, and 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.

**22. Reserved.**

**23. Reserved.**

## EXHIBIT A – APPLIANCE DIFFERING TERMS

### APPLIANCE DIFFERING TERMS FOR THEDEEP DISCOVERY FAMILY OF APPLIANCES

**1. Introduction; Controlling Terms and Conditions.** If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “**Agreement**”) that is a Deep Discovery Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance, the Integrated Software, and/or Microsoft Components, without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of these Appliance Differing Terms. **The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), shall be the complete statement of the agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Ordering Activity by Trend Micro for Paid Use or Test Use and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom by agreement of the Parties.**

**2. Agreed Definitions.** The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“**Custom Sandbox**” means a secured code execution environment of the Appliance that may be optionally created by Ordering Activity to meet its specific/unique system/environmental requirements. Each Custom Sandbox requires various Microsoft Components that must be licensed, purchased, installed, and configured by Ordering Activity (and NOT Trend Micro) for Paid Use in order for Custom Sandboxing to be created, deployed, and utilized by Ordering Activity in its environment – in other words, Trend Micro does NOT sell the



Appliance with Microsoft Components. Each Appliance has a fixed number of Custom Sandboxes that may be created by Ordering Activity as may be advised by Trend Micro.

“**Deep Discovery Appliance**” or “**Appliance**” as used herein these Appliance Differing Terms, only means Trend Micro’s Deep Discovery family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version of the Integrated Software. Each Appliance is composed of Hardware, Device Code, Integrated Code, and at the Ordering Activity’s option, Microsoft Components. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold; the Device Code portion is licensed by the Hardware manufacturer; the Integrated Software portion is licensed in accordance herewith by Trend Micro; and the Microsoft Components must be licensed and purchased by Ordering Activity from Microsoft and/or its resellers based on the needs and uses contemplated by Ordering Activity.

“**Dell**” means Dell Marketing L.P., or an affiliate.

“**Device Code**” means any operating system, microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with the Hardware by Dell. Device Code forms a necessary part of such Hardware and provides, among other things, the necessary instructions for how the Hardware operates and communicates with other Computers. Device Code does not form part of Integrated Software and is not licensed hereunder by Trend Micro to Ordering Activity.

“**Hardware**” means the Dell-manufactured device (unless another manufacturer of similar capabilities has been notified to Ordering Activity that forms a part of the Appliance).

“**Integrated Software**” means the object code version (only) of the Trend Micro-published Deep Discovery applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term Integrated Software also includes when purchased as part of paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may optionally be used by Ordering Activity in accordance with the Documentation. Trend Micro does not license in any circumstance, and Integrated Software does not include, any Microsoft Components that may be installed on the Appliance by Ordering Activity to create Custom Sandboxing or any other third party software that may be licensed to Ordering Activity that may be installed/deployed (in accordance with the Documentation) on Custom Sandboxes to enhance the capabilities of the Appliance. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. **Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.**

“**License Termination Event**” means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software (and/or any Trend Micro-provided Microsoft Component in the case of a Test) is uninstalled from the Appliance; (2) the Appliance, Integrated Software, or Microsoft Component (in the case of any Trend Micro-provided Microsoft Component in connection with a Test) is used for any purpose other than as permitted in the Documentation or the Agreement; (3) any additional/different software is installed on an Appliance other than as specifically permitted by the Documentation with respect to Custom Sandboxing; (4) the Hardware is retired, removed from service, or Repurposed; (5) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Ordering Activity without permission of Trend Micro or Dell; (6) the Test Period expires if applicable; or (7) either Party provides notice of termination of a Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“**Microsoft Components**” means various virtualized versions of Microsoft Windows and of Microsoft Office that must be installed and configured on the Appliance in order for Custom Sandboxing to be created, deployed, and utilized by the Appliance on the election of Ordering Activity.

“**Non-Production Environment**” means Ordering Activity’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason. Notwithstanding the foregoing, at the written request of Ordering Activity, Trend Micro may grant Ordering Activity the right to use a COPY of live production data to conduct the Test in a Non-Production Environment only on the condition that Ordering Activity first agrees (in a separate written agreement with Trend Micro) that all copies of the live production data so used will be irretrievably destroyed by Ordering Activity after the Testing is complete and will in no event or circumstance be incorporated by any person back into the live production data or production environment/systems of, or otherwise used in any remediation efforts by, Ordering Activity.

“**Paid Use**” means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“**Repurpose**” means for purposes of these Appliance Differing Terms: (1) Ordering Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Ordering Activity installing additional/different software to the Appliance that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

**3. Test License; Test Use.** For the avoidance of doubt, Integrated Software accessed by Ordering Activity for a Test is Test Software under Section 7.1 of the Agreement.

**3.1 Test Use – Appliance.** In instances that the Agreement authorizes Ordering Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Ordering Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Ordering Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Ordering Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Ordering Activity (the “**Test Period**”).

**3.2 Test Use – Integrated Software.** If Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants

Ordering Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Ordering Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

**3.3 Test Use – Microsoft Components.** If Ordering Activity is provided any Microsoft Components that are pre-installed or otherwise made available to Ordering Activity by a third party such as a Trend Micro Reseller (or a Microsoft reseller) in connection with Custom Sandboxing on the Appliance that is the subject matter of a Test Use, Ordering Activity understands and agrees that: (1) any such Microsoft software is NOT part of the Integrated Software licensed by Trend Micro hereunder; (2) is NOT licensed or made available to Ordering Activity by Trend Micro; and (3) Trend Micro shall have no responsibility or liability in connection therewith. Notwithstanding the foregoing, if Ordering Activity is nevertheless provided an Appliance by Trend Micro for Test Use with MSDN-licensed versions (developer versions that are for use ONLY in a Non-Production Environment) of Microsoft Components installed by Trend Micro that are necessary to permit Ordering Activity to confirm that the Custom Sandboxes created by Trend Micro (based on Ordering Activity's expectations/needs made known to Trend Micro) satisfy Ordering Activity expectations/needs. On the occurrence of the foregoing, Ordering Activity agrees that: (a) Ordering Activity's possession and use thereof is subject to the Agreement even though it is not Integrated Software or licensed by Trend Micro; and (b) Ordering Activity's use and possession of the Integrated Software and any use of Microsoft Components supplied by Trend Micro will terminate immediately and without notice on termination or expiration of the Test even if Ordering Activity subsequently purchases an Appliance for Paid Use.

**3.4 Test Use – Hardware Loan.** Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Ordering Activity agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Ordering Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

**3.5 Hardware Usage.** With respect to the Test of an Appliance, Ordering Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the "Accessories") supplied by Trend Micro with the Appliance and, further, Ordering Activity agrees to protect the Appliance and Accessories from loss or physical damage. Ordering Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories and Ordering Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Ordering Activity's custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

**3.6 Test Use Warranty/Representation Disclaimer.** TREND MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREUNDER "**AS IS, WITH ALL FAULTS.**" FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO: THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY'S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS ARISING FROM OR IN CONNECTION WITH THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGGREGATE FOR ALL CLAIMS AND CAUSES OF ACTION, TO THE SUM OF FIVE HUNDRED DOLLARS (USD\$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

**3.7 Test Use License - Termination.** Ordering Activity's possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

**3.7.1 Integrated Software and Other Software – Test Use.** On termination of any Test, Ordering Activity covenants and agrees that it will immediately uninstall and irretrievably destroy (without retention of any copies thereof of any kind) the Integrated Software and Microsoft Components, if any. Ordering Activity agrees that it will provide to Trend Micro, if requested, an unqualified certification of irretrievable destruction of the Integrated Software and Microsoft Components, if any, in accordance with the Agreement. For the avoidance of doubt, the foregoing obligation of destruction of the Integrated Software and Microsoft Components on the occurrence of a Termination Event shall apply even if Ordering Activity decides to purchase the Appliance used for Test Use.

**3.7.2 Hardware Return.** Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

**3.7.3 Purchase of Unit of Appliance Tested.** Ordering Activity understands and agrees that if, after the completion of a Test or otherwise, the Ordering Activity decides to acquire/purchase for Paid Use the unit of Appliance that is being used for a Test Use by Ordering Activity, Ordering Activity agrees that it will uninstall the Integrated Software and all Microsoft Components and enter into the Agreement anew by issuance of its Order with respect to such Paid Use before the Integrated Software can be reinstalled in the Appliance. After acceptance of Ordering Activity's Order by Trend Micro by issuance of a License Certificate, Microsoft Components may only be installed on the Appliance by Ordering Activity after it has separately licensed and purchased the appropriate Microsoft Components from Microsoft and/or its resellers since Trend Micro has no ability or right to sell/license/provide any Microsoft Components to Ordering Activity (or any other person) in connection with a Paid Use of an Appliance.

**3.8 Acknowledgement.** The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

**3.9 Registration and Information Collection.** As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identity/contact information of Ordering Activity's systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

**3.10 Benchmarking.** Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; *provided, however*, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

**4. Paid Use License Appliance and Integrated Software.** This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

**4.1 For Integrated Software.** Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-assumable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Ordering Activity solely on the unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity's option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. For clarity, Maintenance of the Integrated Software is included in the price of the Appliance for the first year, but renewal Maintenance must be purchased by Ordering Activity each year thereafter in order to continue to receive such Maintenance unless Ordering Activity has purchased a Subscription Period license to such Integrated Software as evidenced on the License Certificate for a period of two (2) years or less, in which event Maintenance is included for the duration of the Subscription Period. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period. Trend Micro agrees that it will continue performance under the Agreement during the pendency of any claim for breach of contract that Trend Micro may have against Ordering Activity.

**4.2 Documentation.** Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original material provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

**4.3 Custom Sandboxing.** Ordering Activity understands and agrees that while the Integrated Software/Deep Discovery Appliance gives Ordering Activity the option to create Custom Sandboxes that meet Ordering Activity's specific system requirements, the Integrated Software when shipped to Ordering Activity as part of the Appliance does NOT include ANY licensed Microsoft Components that are licensed to Ordering Activity by Trend Micro under the Agreement; *provided, however*, if the Appliance is delivered to Ordering Activity by any third party (such as a Reseller) with any Microsoft Components installed, then Ordering Activity understands and agrees that such components are NOT licensed hereunder or otherwise provided to Ordering Activity by or on behalf of Trend Micro and are not part of the Integrated Software. While Trend Micro may provide information (including the number and types/versions/editions of Microsoft Components necessary to create the Custom Sandboxes) and instructions to Ordering Activity in the Documentation regarding the creation and configuration of Custom Sandboxes in Ordering Activity's Appliance, Ordering Activity acknowledges and agrees that it is solely Ordering Activity's responsibility to purchase and compliantly license (based on such things as Ordering Activity's intended use and deployment) all Microsoft Components necessary for Ordering Activity's creation/deployment of Custom Sandboxing. **Further to the foregoing, Ordering Activity agrees that no Trend Micro employee (such as a sales engineer or sales executive) is trained or authorized to provide Ordering Activity with any information or guidance on any of Microsoft's licensing/policies/rules/requirements for Microsoft Components and, Ordering Activity further agrees that, Ordering Activity will not rely on any information on Microsoft Components that may nevertheless be gratuitously provided to Ordering Activity by any such individual.** Except for the Integrated Software licensed under the Agreement, Ordering Activity covenants that Ordering Activity will separately obtain and maintain all rights and licenses necessary for each third party software component (whether Microsoft Components or products of another software publisher) Ordering Activity installs or accesses in connection with its creation of Custom Sandboxing.

**4.4 Additional License Rights/Limitations.** The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will not: (1) remove, add, or substitute any third party software from or to the Appliance except and only to the extent permitted in the Documentation with respect to the creation of Custom Sandboxing; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) notwithstanding anything contained in the Agreement to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Deep Discovery Appliance is inoperative/unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

**4.5 Paid Use License Warranty – Integrated Software.** For Paid Use licenses of Integrated Software, Trend Micro warrants only to Ordering Activity that for one (1) year following Ordering Activity's first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including "ReadMe" files and release notes that may be made available therewith. The Parties expressly acknowledge that Ordering Activity's exclusive remedy for non-conformance with the foregoing warranty and Trend Micro's sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

**4.5 Maintenance of Integrated Software.** When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

**5. Additional Hardware Specific Terms.**

**5.1 No Trend Micro Hardware Warranty.** Notwithstanding anything to the contrary in the Agreement, since the Hardware is manufactured and warranted by Dell and Trend Micro is only acting as a OEM reseller thereof, Trend Micro makes no representation, warranty, or guarantee of any kind or nature with respect to Hardware (or its Device Code), INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR SPECIFIC PURPOSE, TITLE, OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED BY TREND MICRO. IN ADDITION, THE PARTIES AGREE THAT SECTION 13 OF THE AGREEMENT (INTELLECTUAL PROPERTY INDEMNITY) DOES NOT APPLY TO HARDWARE (OR ITS DEVICE CODE).

**5.2 New Versions.** For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

**5.3 Repurpose of the Hardware – Paid Use.** Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity's intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.

**5.4 Paid Use Title; Hardware Ownership; Assignment.** Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro's (or its manufacturer's or systems integrator's) dock when loaded onto the first carrier for shipment to Ordering Activity. For the avoidance of doubt, transfer of title to the Hardware also includes the transfer of Dell's then-current Limited Hardware Warranty and on-site support contract referenced in Section 5.2 above for such Hardware, and if such be necessary, Trend Micro hereby assigns contemporaneously with the transfer of title to the Hardware to Ordering Activity, and Ordering Activity hereby accepts such assignment on an ongoing basis of, the referenced Limited Hardware Warranty and on-site support contracts.

## **APPLIANCE DIFFERING TERMS FOR THE TIPPINGPOINT FAMILY OF APPLIANCES EXCLUDING THE ADVANCED THREAT PROTECTION (ATP) APPLIANCE**

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the "Agreement") that is a TippingPoint Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance and the Integrated Software without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of these Appliance Differing Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, shall be the complete statement of the agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Ordering Activity by Trend Micro for Paid Use or Test Use and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom by agreement of the Parties.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

"Hardware" means the Trend Micro-manufactured device (or another manufacturer if used by Trend Micro as a source for TippingPoint hardware) that forms a part of the Appliance.

"Integrated Software" means the object code version (only) of the Trend Micro-published TippingPoint applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance or the Virtual Appliance being provided hereunder when acquired by Ordering Activity. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term Integrated Software also includes when purchased as part of paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may be used by Ordering Activity in accordance with the Documentation. The license granted in these Appliance Differing Terms to Integrated Software does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) other than as a Virtual Appliance, install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.

"License Termination Event" means the occurrence of an event or circumstance by which the license for Integrated Software granted to Ordering Activity under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software is uninstalled from the Appliance; (2) the Appliance or Integrated Software is used for any purpose other than as permitted in the Documentation or the Agreement; (3) the Hardware is retired, removed from service, or Repurposed; (4) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Ordering Activity without permission of Trend Micro; (5) the Test Period expires if applicable; or (6) either Party provides notice of termination of the Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“Non-Production Environment” means Ordering Activity’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Ordering Activity’s production environment/systems) that does not access or use live production data at any time or for any reason.

“Paid Use” means any access, deployment, or use of an Appliance/Integrated Software by Ordering Activity that: (1) has been purchased by Ordering Activity pursuant to the Agreement; and/or (2) Ordering Activity in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“Repurpose” means for purposes of these Appliance Differing Terms: (1) Ordering Activity configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Ordering Activity installing additional/different software to the Appliance that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

“Speed License” means (only with respect to an Appliance or Virtual Appliance that requires a Speed License in order to activate, execute, and/or use the Integrated Software forming a part of such Product) a Subscription Period entitlement to a Licensed Capacity (at a prescribed level of data throughput and/or for such time as may be stated in the applicable SKU and/or License Certificate) for an Appliance or Virtual Appliance. Ordering Activity understands that a Speed License is not required for all Appliances, but if a Speed License is required (as made known in the Product’s Documentation and/or SKU), a Speed License must be purchased by Ordering Activity and remain active in order to execute and use the Integrated Software or otherwise make any use of the Appliance or Virtual Appliance. When and if a required Speed License is purchased by Ordering Activity, Ordering Activity will receive a registration key/activation code that, when installed by Ordering Activity, activates and causes the Integrated Software to execute and be usable in accordance with its Documentation for the level and extent of entitlement purchased by Ordering Activity. A Speed License is not Software under the Agreement, but rather, is a purchased entitlement to a Licensed Capacity for the Integrated Software and forms an integral part of the license for the Integrated Software to the extent of such entitlement.

“Test Period” shall have the meaning set forth in Section 3.1 below.

“Test Use” or a “Test” means the gratuitous right granted to Ordering Activity on the terms and subject to the conditions hereof, to conduct an evaluation, proof-of-concept, trial, or test of an Appliance and its Integrated Software only in a Non-Production Environment for a Test Period as defined in Section 7.1 of the Agreement.

“TippingPoint Appliance” or “Appliance” as used herein these Appliance Differing Terms, means Trend Micro’s TippingPoint family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version the Integrated Software, but shall not include the Advanced Threat Protection (ATP) appliance, which ATP appliance has separate Appliance Differing Terms from those of other TippingPoint appliances. Each Appliance is composed of Hardware and Integrated Software. When acquired by the Ordering Activity for any use other than Test Use, the Hardware portion of the Appliance is sold and the Integrated Software portion is licensed in accordance herewith by Trend Micro. Each Appliance acquired for Paid Use that is shipped to Ordering Activity includes Hardware and Integrated Software that is installed by Trend Micro prior to delivery of the Appliance to Ordering Activity.

“Virtual Appliance” means for purposes of these Appliance Differing Terms, a version of Integrated Software containing features and functionality of a TippingPoint Appliance, but does not include (and Trend Micro does not provide) any Hardware component thereof, it being understood and agreed that Ordering Activity must supply and maintain host hardware for such Virtual Appliance in accordance with the Documentation therefor. A Virtual Appliance is governed by the Agreement as Software and by these Appliance Differing Terms as Integrated Software.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Ordering Activity for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Ordering Activity to Test an Appliance, Trend Micro will supply the Appliance without charge to Ordering Activity for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Ordering Activity on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Ordering Activity performing a Test for no more than thirty (30) days (unless Ordering Activity is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Ordering Activity (the “Test Period”).

3.2 Test Use – Integrated Software. If Ordering Activity is permitted to receive a Test of an Appliance, Trend Micro grants Ordering Activity for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Ordering Activity by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Ordering Activity will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Ordering Activity agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Ordering Activity agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Ordering Activity shall at all times keep the Appliance and any power cords, sockets or accessories (the “Accessories”) supplied by Trend Micro with the Appliance and, further, Ordering Activity agrees to protect the Appliance and Accessories from loss or physical damage. Ordering Activity shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories and Ordering Activity agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Ordering Activity’s custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

3.6 Test Use Warranty/Representation/Disclaimer. TREND MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO ORDERING ACTIVITY HEREUNDER “AS IS, WITH ALL FAULTS,” AND, FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET ORDERING ACTIVITY’S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. ORDERING ACTIVITY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED

BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO'S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGGREGATE TO THE SUM OF FIVE HUNDRED DOLLARS (USD\$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

3.7 Test Use License - Termination. Ordering Activity's possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.8 Hardware Return. Unless Ordering Activity elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Ordering Activity shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.9 Acknowledgement. The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.10 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Ordering Activity may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or Ordering Activity name as well identity/contact information of Ordering Activity's systems administrators/technical staff. Ordering Activity consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

3.11 Benchmarking. Ordering Activity may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Ordering Activity; provided, however, as a condition of Trend Micro granting the foregoing permission, Ordering Activity agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Appliance and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. On the terms and subject to Ordering Activity's continuous compliance with the conditions set forth in the Agreement and on the condition precedent of Ordering Activity making payment as directed in Section 1.3 of the Agreement, Trend Micro grants to Ordering Activity (solely for the internal business operations and purposes of Ordering Activity or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Ordering Activity accepts, a non-exclusive, non-transferable, non-assignable/non-assumable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to (except as referenced in and limited by Section 4.2 below with respect to Products requiring a Speed License for execution and use) activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Ordering Activity solely on the unit of Appliance originally shipped to Ordering Activity by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Ordering Activity's option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Ordering Activity understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. Ordering Activity acknowledges that the Integrated Software is never licensed for a Perpetual Period.

4.2 Speed License for Integrated Software. Notwithstanding anything to the contrary in Section 4.1 or these Appliance Differing Terms, where an Appliance or Virtual Appliance requires a Speed License, the license for Integrated Software granted in Section 4.1 to activate, execute, and/or use the Integrated Software is subject to the condition precedent (but the license to inactively deploy is NOT subject to such condition) that Ordering Activity first purchase and keep active a Speed License in order to activate and execute the Integrated Software and use the Product in accordance with its Documentation. The lapse of a purchased Speed License shall be an additional License Termination Event under these Appliance Differing Terms for the Integrated Software or Virtual Appliance for which the Speed License has lapsed and the applicable Product will not thereafter operate unless and until a new Speed License is obtained by the Ordering Activity. For the avoidance of doubt, when an Appliance or Virtual Appliance that requires a Speed License is purchased by Ordering Activity, such Product is inactive and incapable of activation, executing any productive process, operation, or being used by Ordering Activity for any purpose unless (and only for such time as) Ordering Activity purchases and keeps active a Speed License for that Product.

4.3 Documentation. Ordering Activity is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Ordering Activity has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original material provided to Ordering Activity by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.4 Additional License Rights/Limitations. The license granted in this Section 4 does not grant Ordering Activity the right to, and Ordering Activity agrees that Ordering Activity will not: (1) remove, add, or substitute any third party software to the Appliance; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) notwithstanding anything contained in the Agreement to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Appliance is inoperative/unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

4.5 Paid Use License Warranty - Integrated Software. For Paid Use licenses of Integrated Software, Trend Micro warrants only to Ordering Activity that for ninety (90) days following Ordering Activity's first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including "ReadMe" files and release notes that may be made available therewith. The Parties expressly acknowledge that Ordering Activity's exclusive remedy for non-conformance with the foregoing warranty and Trend Micro's sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

4.6 Maintenance of Integrated Software. When licensed by Ordering Activity for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 Trend Micro Hardware Warranty. TippingPoint Appliances are covered by the TippingPoint Product Limited Warranty located at [https://tmc.tippingpoint.com/TMC/ShowDocuments?parentFolderId=gadocs&contentId=hardware\\_limited\\_warranty.pdf](https://tmc.tippingpoint.com/TMC/ShowDocuments?parentFolderId=gadocs&contentId=hardware_limited_warranty.pdf).

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Ordering Activity is the owner of the Hardware purchased for Paid Use, Ordering Activity may determine to Repurpose the Hardware component of any unit of Appliance purchased by Ordering Activity at any time by giving Trend Micro written notice of Ordering Activity’s intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Ordering Activity, such action is a License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.

5.4 Paid Use Title; Hardware Ownership. Title and risk of loss for the Hardware component of an Appliance that is sold to Ordering Activity for Paid Use is transferred to Ordering Activity at Trend Micro’s (or its manufacturer’s or systems integrator’s) dock when loaded onto the first carrier for shipment to Ordering Activity.

**EXHIBIT B - MAINTENANCE OF TREND MICRO-BRANDED SOFTWARE  
LICENSED UNDER THE TREND MICRO BUSINESS SOFTWARE AND APPLIANCE AGREEMENT  
EFFECTIVE 1 MAY 2017  
(herein these “Maintenance Terms”)**

1. Introduction; Controlling Terms and Conditions. If Ordering Activity is procuring paid Maintenance (as defined below) of Software licensed from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “Agreement”), the Parties agree that such Maintenance is provided under the Agreement and these Maintenance Terms which are ancillary to, incorporated into, and forms a part of the Agreement with respect to paid Maintenance for such Software and together the referenced documents will solely govern and control the Maintenance of such Software. In each instance in which the terms and provisions of these Maintenance Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to Maintenance of the Software, without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Maintenance Terms shall reference the respective section, schedule, attachment or exhibit of these Maintenance Terms. The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Maintenance Terms, shall be the complete statement of the agreement of the Parties with respect to any paid Maintenance made available to Ordering Activity by Trend Micro and any additional, conflicting, or different terms or conditions proposed by Ordering Activity in any Ordering Activity-issued document (such as an Order), are hereby rejected by Trend Micro and Void.

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Software. Any capitalized term used in these Maintenance Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“Authorized Contact” means one or more individuals appointed by Ordering Activity (consistent with Trend Micro’s Support Guide or other published policies) to act as contacts for requesting and receiving Maintenance, which Authorized Contacts will be resident in the country where Ordering Activity is resident unless otherwise notified to Trend Micro by Ordering Activity and approved by Trend Micro.

“Escalated Issue” means with respect to code-level errors/bugs in licensed Software, a request from Ordering Activity for Maintenance under Section 3.2.1(b) of these Maintenance Terms and the Support Guide resulting from Ordering Activity suspecting or asserting in accordance herewith, that such licensed Software no longer performs in accordance with its Documentation in any material respect. Escalated Issues may only be created by Ordering Activity as directed in the Support Guide.

“Maintenance” is defined in Section 3.2 of these Maintenance Terms and includes the Support Guide as well as other Trend Micro Maintenance/support policies published from time-to-time by Trend Micro or otherwise made available to Ordering Activity.

“Separate Modules” means any plug-in, module, or other option for Software that Trend Micro determines to be new or different product/features/functionality that Trend Micro makes generally available to the public by license for new or additional consideration.

“Software” means for purposes of these Maintenance Terms, Standalone Software and Integrated Software, but the term does not include Device Code (except that certain virtual appliances licensed by Trend Micro (as identified in its Documentation) DO include an operating system as part of the licensed Software) or Test Software. “Device Code” means any operating system (except for certain virtual appliances as identified in its Documentation, in which event, the Trend Micro-provided operating systems is bundled with and forms a part of the Software), microcode, firmware, utilities and routines, and other sets of object code instructions that are installed on and bundled with any hardware that may be provided to Ordering Activity as part of an Appliance.

“Support Guide” means Trend Micro’s then-current Global Technical Support Guide for Business Customers posted from time-to-time at <https://success.trendmicro.com/support-policies>. The Support Guide sets out policies and procedures for Trend Micro’s provision of Maintenance to its customers throughout the world other than customers located in Japan, the People’s Republic of China, Taiwan, the Republic of Korea, Hong Kong SAR, and Macau SAR. As may be made known by Trend Micro locally, such other excluded-region customers may be entitled to support from local or remote Trend Micro resources.

“Updates” means and includes if and when generally made available by Trend Micro with respect to Software licensed hereunder that is also then-subject to paid Maintenance, new object code versions (including patches and workarounds) of such Software that includes: (a) improvement of features/functionality that is used to identify, detect, and block computer viruses, spam, spyware, malicious code, ransomware, websites, or other forms of computer abuse (both known and unknown) generally categorized as malware and other forms of content identification or categorization; (b) corrections, modifications, revisions, patches, workarounds, new definition files, maintenance updates, bug fixes and/or other enhancements to, or for use in connection with, the Software; and/or (c) major or minor new versions of existing Software that contains new features, improvements to existing features, capabilities, structures, and/or functionality that Trend Micro makes available to existing customers that have then-purchased Maintenance for such Software; provided, however, the term “Updates” specifically excludes Separate Modules and does not apply to the Hardware component of any Appliance including its Device Code. Updates that are released by Trend Micro from time to time replace or patch and will become part of previously licensed copies of the updated Software and will not increase the units/Licensed Capacity of Software licensed hereunder, or otherwise create additional copies or licenses of such Software, nor does any Update create any new or additional warranty for the Software it updates.

3.1 Maintenance Overview. Only when purchased by Ordering Activity, Maintenance will be provided to Ordering Activity on the terms and subject to the conditions of these Maintenance Terms and the Agreement as follows: (a) for Standalone Software licensed for a paid Subscription Period; (b) for Standalone Software licensed for a Perpetual Period: (i) for one (1) year only from the date Ordering Activity first receives the Standalone Software registration key(s), activation code(s), the Standalone Software serial number(s) or License Certificate, whichever is earlier, for newly-licensed Standalone Software, (ii) for one or more additional one (1) year periods if Maintenance is repurchased by Ordering Activity; and (c) for the first twelve (12) months from the Delivery Date for Integrated Software licensed as part of an Appliance

unless otherwise stated in applicable Appliance Differing Terms. On the terms and subject to the conditions of the Maintenance Terms then-in-effect, Ordering Activity may purchase additional Maintenance for twelve (12) month periods for its Licensed Capacity for Software referenced in subparts (2) and (3) above, otherwise, Maintenance will lapse at the end of the paid twelve month period.

### **3.2 Maintenance; Maintenance Exclusions.**

**3.2.1 Maintenance.** When purchased by Ordering Activity, Ordering Activity shall have the right to receive and Trend Micro shall provide the following to Ordering Activity's Authorized Contacts on the terms and subject to the conditions set forth in these Maintenance Terms, the following English-language services (collectively, together with the Support Guide and other policies, procedures, and objectives made commercially-available available by Trend Micro, "**Maintenance**");

- (a) Trend Micro will make available to Ordering Activity for downloading from Trend Micro's website advised to Ordering Activity from time-to-time, Updates for then-licensed Software released during each paid Maintenance period.
- (b) Trend Micro will accept requests from Ordering Activity's Authorized Contacts via telephone or electronic submission in English on Trend Micro business days (except as noted below), to Trend Micro's support personnel located within the United States only, with respect to: (1) routine, short duration initial Software installation and usage (how-to) questions, but it shall remain Ordering Activity's sole responsibility to install, configure, and deploy all Software; and (2) with respect to an Escalated Issue, troubleshooting code-level errors/bugs in licensed Software (that is to say, Software does not substantially conform to it Documentation) that Ordering Activity is unable to bring to resolution on its own.
- (c) Trend Micro will provide Ordering Activity's Authorized Contacts with reasonable access to Trend Micro's antivirus researchers via an established technical support channel set forth in the Support Guide to assist Ordering Activity in addressing malware/virus infections, but in no event will Trend Micro provide any remediation services with respect thereto unless by separate agreement.
- (d) The Ordering Activity shall have the right to optionally enable, access, and use Trend Micro's Smart Protection Network ("**SPN**") to the extent such features form a part of a licensed Software.
- (e) All Maintenance will be conducted by the Parties only in the English language (unless otherwise agreed) and provided by Trend Micro and/or its global Affiliates (or its or their subcontractors) from locations Trend Micro and/or its global Affiliates may determine from time-to-time, which may be a location solely outside the country or region of Trend Micro's Licensing Entity. Maintenance may be available in other languages on different terms and conditions and at an additional charge. Ordering Activity understands that in some regions, Maintenance of Products will only be provided by Trend Micro's subcontractors.
- (f) Maintenance does not include any Separate Modules, Premium Support Services, or other Trend technical or engineering services.

**3.2.2 Escalated Issues.** In connection with Trend Micro's performance of its Maintenance obligations with respect to an Escalated Issue, Ordering Activity agrees to perform, and Trend Micro's responsibilities and obligations to perform Maintenance with respect to Escalated Issues are subject to, Ordering Activity doing the following:

- (a) Ensuring that the licensed Software is being used only in accordance with its Documentation.
- (b) Prior to escalating a suspected issue to Trend Micro, Ordering Activity will undertake the identification of and/or isolation of suspected issue(s) with licensed Software such as recreation, diagnosis, and resolution of problems related to licensed Software, and if Ordering Activity is unable to do so, Ordering Activity will develop, diagnose, identify (including gathering all necessary or relevant information, logs, and/or technical information), and create repeatable demonstrations of any purported Software non-conformance, issues or errors for submission to Trend Micro for Maintenance.
- (c) After escalation of an issue, allow Trend Micro to have remote access to Ordering Activity's networks/systems to troubleshoot an Escalated Issue if requested by Trend Micro to the extent consistent with Ordering Activity security policies. Ordering Activity and Trend Micro will agree on appropriate security measures to prevent unauthorized access to Ordering Activity's networks/systems/data for which there is no need-to-know; *provided, however*, the ultimate responsibility for the security of the networks/systems/data remains solely with Ordering Activity. Trend Micro will not connect to the Ordering Activity's networks/systems without prior authorization and such connection will be solely to provide Maintenance. Ordering Activity has the right to observe and maintain control over such access.
- (d) Make available knowledgeable (in Ordering Activity's systems and the Software) technical staff (including, without limitation, Authorized Contacts) to aid Trend Micro in resolution of any Escalated Issues.
- (e) With respect to each Escalated Issue, Ordering Activity remains responsible for: (i) any data and the content of any data/information Ordering Activity makes available to Trend Micro; (ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data and information (including any personally-identifiable information); and (iii) backup and recovery of the networks/systems/devices/databases and any stored data/information. Ordering Activity will not send or provide to Trend Micro access to personally-identifiable information or other information controlled or regulated under Applicable Laws during or in connection with any Escalated Issue.
- (f) Ordering Activity understands and consents (without compensation) to Trend Micro using information about Software errors and malware problems discovered in connection with any Escalated Issues to improve Trend Micro's products and services and assist with the provision of Maintenance offered by Trend Micro.

**3.2.3 Maintenance Exclusions.** Maintenance does not include and Ordering Activity will perform, among other things, as Ordering Activity deems necessary or appropriate (or cause to be performed by Contractors): (a) the installation, activation, configuration, deployment, implementation, Updating, and operational training for licensed Software, including gaining access to and utilizing all features and functionality of such Software; (b) the provision of initial support assessment and distinguish whether or not the issue is licensed Software-related that should become an Escalated Issue; (c) simulating and attempting to recreate Escalated Issues and performing any required interoperability tests between Software and any Ordering Activity network/system component; and (d) facilitation and collection of samples and escalation of malware and virus-specific Escalated Issues.

**3.3 Authorized Contacts.** Trend Micro will provide Maintenance to Ordering Activity only through Ordering Activity's Authorized Contacts. Authorized Contacts, each of whom must be technically skilled and knowledgeable about the Software and the Ordering Activity's networks, systems, and environment in order to help resolve system issues and to assist Trend Micro in analyzing and resolving Escalated Issues. The Support Guide states the number of Authorized Contacts that Ordering Activity is entitled to register with Trend Micro and the registration process. If Ordering Activity needs to designate additional technical personnel as Authorized Contacts, Trend Micro may permit



Ordering Activity to do so, but Trend Micro reserves the right to charge Ordering Activity applicable fees. Authorized Contacts will be responsible for, among other things: (i) developing and deploying troubleshooting processes within Ordering Activity and its Affiliates accessing/using any Software licensed to Ordering Activity; (ii) performing any and all technical service required of Ordering Activity in connection with any Software other than Maintenance that Trend Micro is obligated to perform hereunder; and (iii) performing the technical services required of Ordering Activity prior to Ordering Activity's request for assistance with any Escalated Issue so as not to impair or impede Trend Micro's ability to perform Maintenance of any Software in accordance herewith. An Authorized Contact may not share his or her login, ID, or other credentials with anyone else, nor delegate his or her responsibilities as an Authorized Contact to anyone other than another Authorized Contact. Ordering Activity may update this contact information through Trend Micro's designated online case management system referenced in the Support Guide. Ordering Activity agrees that Trend Micro may store, disclose internally, and use the business contact information of Ordering Activity's Authorized Contacts and other employees and Contractors in connection with the provision of Maintenance by Trend Micro and its Affiliates. Where required by Applicable Law, by providing any such business contact information to Trend Micro, Ordering Activity represents to Trend Micro on an ongoing basis that Ordering Activity will have already notified and obtained the consent of the individuals whose business contact information may be stored, disclosed internally, and processed and will forward their requests, if any, to Trend Micro where required by Applicable Law to access, update, correct or delete their contact information to Trend Micro that will then comply with such request.

**3.4 Lapse and Reinstatement.** In the event that Ordering Activity allows Maintenance to lapse or expire for more than one hundred and twenty (120) days, Ordering Activity shall have no right to purchase and Trend Micro shall have no obligation to permit Ordering Activity to reinstate or otherwise purchase, Maintenance.. **Trend Micro advises and Ordering Activity acknowledges that because of the constantly changing threat/security environment and periodic technology improvements to most Software, the technical and/or security capabilities, functionality, and performance of any such Software will rapidly degrade and will, in most instances, not perform in the manner and for the purposes for which it is designed or as set forth in the Documentation if annual Maintenance is not repurchased or is otherwise allowed to lapse and such Software is thereafter utilized by Ordering Activity.**

**3.5 End-of-Maintenance.** Trend Micro reserves the right to discontinue Maintenance of any licensed Software (including Software licensed for a Perpetual Period) in accordance with this Section (each of the following herein an "End-of-Maintenance" event). In each of the following End-of-Maintenance events:

- (a) Trend Micro will continue to make Maintenance available for any licensed Software that is no longer offered for sale by Trend Micro for a period of at least twelve (12) months after the end-of-sale.
- (b) Trend Micro provides Maintenance and other technical support for a then-current Update of licensed Software for at least eighteen (18) months after the release of a subsequent Update for such Software.

Trend Micro advises that it will not renew Maintenance for a period that would otherwise extend past the expiration of an End-of-Maintenance period referenced in subpart (a) above. The Parties understand and agree that an End-of-Maintenance event with respect to any licensed Software shall not be considered a breach hereof by Trend Micro, nor shall any such End-of-Maintenance entitle Ordering Activity to any claim for compensation or damages as result of or in connection therewith.

#### **4. Limited Maintenance Warranty; Non-Conformance Remedy.**

**4.1 Limited Maintenance Warranty.** When purchased by Ordering Activity, Trend Micro warrants to Ordering Activity ONLY that Maintenance will be provided or performed using reasonable care and skill on the terms and subject to the conditions of these Maintenance Terms. Trend Micro will have no obligation to provide Maintenance with respect to any licensed Software, and the foregoing Maintenance warranty will be voided by: alteration, modification, enhancement, or misapplication of the licensed Software; failure to properly install and/or configure the licensed Software; use of the licensed Software other than in accordance with its Documentation; failure to install/deploy the most current Update if such Update would resolve the Escalated Issue; improper maintenance of the Software by any person other than Trend Micro; use of the licensed Software in an unsuitable physical or operating environment; or an Escalated Issue is caused in whole or in part by a product or technology that Trend Micro did not supply.

**4.2 Non-Conformance Remedy.** For a breach of the foregoing warranty, Ordering Activity's sole and exclusive remedy, and Trend Micro's entire obligation and liability shall be the re-performance of the non-conforming Maintenance. However, only with respect to separately purchased (by unique SKU) and invoiced Maintenance, if Trend Micro is unable to re-perform Maintenance for any reason to achieve conformance with the foregoing warranty after making commercially reasonable efforts, either Ordering Activity or Trend Micro may terminate these Maintenance Terms for convenience as to the non-conforming portion of such Maintenance, in which event, Trend will refund to Ordering Activity a pro-rated amount corresponding to the remaining portion of any paid Maintenance. **TREND MICRO SHALL ONLY HAVE LIABILITY FOR ANY SUCH BREACH OF WARRANTY IF ORDERING ACTIVITY PROVIDES TIMELY NOTICE (IN ACCORDANCE WITH THE SUPPORT GUIDE) OF THE BREACH TO TREND MICRO WITHIN TEN (10) DAYS OF THE PERFORMANCE OF THE APPLICABLE MAINTENANCE SERVICE. THE FOREGOING WARRANTY IS ORDERING ACTIVITY'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES, GUARANTEES, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT OR GUARANTEE THAT MAINTENANCE WILL BE FREE FROM ERRORS OR DEFECTS, BE UNINTERRUPTED, THAT MAINTENANCE WILL PROTECT AGAINST ALL POSSIBLE THREATS, OR THAT TREND MICRO WILL CORRECT ALL DEFECTS IN MAINTANCE OR SOFTWARE. IN ADDITION TO THE FOREGOING, IT IS EXPRESSLY AGREED THAT THE TERMS, CONDITIONS, LIMITATIONS, AND EXCLUSIONS SET FORTH IN SECTION 12 OF THE AGREEMENT WILL APPLY TO THESE MAINTENANCE TERMS AND MAINTENANCE.**

Trend Micro Incorporated, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA ("Trend Micro" or "we") provides this Privacy Notice to help Ordering Activity understand the types of information that Ordering Activity provide to Trend Micro, what we do with that information and how we protect that information when Ordering Activity use Trend Micro's products and services.

With Trend Micro products and services, Ordering Activity can increase the protection for Ordering Activity's digital data from hackers, spammers, spyware, malware and other online threats. Because of the fast and constant evolving nature of online threats and malware, it is necessary to configure our products and services to constantly provide data and information from Ordering Activity devices to enable us to stay ahead of malicious activities and protect Ordering Activity's devices and data.

### **What information do Ordering Activity provide?**

#### **Product license data**

When Ordering Activity install and activate our products, Ordering Activity provide information such as:

name  
phone number  
email address  
device ID  
operating system  
license key

We use this information to ensure that Ordering Activity license to our solutions is valid and to contact Ordering Activity regarding renewals, technical issues and new product information.

#### **Smart Feedback data**

Ordering Activity provides the following types of information and data if Ordering Activity enables certain features such as Smart Feedback, a key feature of our Smart Protection Network (SPN). Providing these types of information and data enables Ordering Activity to participate, share and leverage Trend Micro's global database of threat related intelligence to rapidly identify and defend against potential threats within Ordering Activity's unique network environment, as described in more detail below.

Product information  
Public IP address  
Mobile/PC environment  
Metadata from suspicious executable files  
URLs, Domains and IP addresses of websites visited  
Metadata of client/device managed by gateway product  
Application behaviors  
Information from suspicious e-mail, including sender and receiver email address, and attachments  
Detected malicious file information  
Detected malicious network connection information

### **How does Trend Micro use the data that Ordering Activity provide to us?**

Trend Micro uses Smart Feedback collected data to understand threat behavior and reveal trends that lead to stronger security solutions.

- **Faster responses to threats:** SPN delivers our latest protection to Ordering Activity in real time. Compared to traditional signature updates, this approach dramatically reduces Ordering Activity's window of vulnerability from (potentially) days to mere minutes.
- **Strong defense against targeted attacks:** Attackers have moved away from launching large scale attacks to focus on more specific and "personal" targets. Smart Feedback allows us to identify new sources and methods of attack.
- **Hidden threats revealed:** Using data collected from around the globe, Trend Micro uses big data analytics to identify critical relationships during an attack and shed light on well-hidden threats. This data also helps Trend Micro find zero-day vulnerabilities to deliver updated protection much more rapidly.
- **Improved results:** The real-time statistics collected by SPN improve the overall quality and performance of Trend Micro solutions

### **How do we protect Ordering Activity's information?**

Trend Micro designs SPN to limit the collection of personal information as much as reasonably possible, by collecting data that cannot identify an individual where this is sufficient, stripping out specific personal information and keeping only redacted behavior profiles. Unavoidably, Ordering Activity's computer will also send some information to SPN that can be connected to Ordering Activity, e.g. location information for mobile devices, or file names bearing identifiable details. But, even if and where information can theoretically be connected to an individual person, we do not normally try to make such connection for data reported by Ordering Activity and other users to SPN.

Beyond data aggregation and redaction, SPN also takes additional measures to keep data secure. SPN transfers data using SSL encryption in addition to destination server authentication. We also deploy other technical, administrative and organizational measures to protect the security of personal data, including access controls, premise security measures, secure data destruction and incident response plans.

### **Where do we process Ordering Activity's SPN data?**

We process SPN data at data centers in the United States. When Ordering Activity connect to our services, Ordering Activity may be sending Ordering Activityr information outside Ordering Activity's country.

#### **SPN Data retention and deletion**

Trend Micro retains Smart Feedback data only as needed for examining and updating the Smart Protection Network and other legitimate business purposes. Trend Micro regularly deletes Smart Feedback data every 6 months.

#### **How do we share Ordering Activity's data?**

We do not share data that Ordering Activity provide to us, except with service providers that help us perform and improve services for Ordering Activity; with Ordering Activity's consent; as necessary to perform our contractual obligations to Ordering Activity; in order to protect Ordering Activity's, our and others' rights and interests; in connection with a sale or reorganization of our business, if and to the extent permissible by law and as required to cooperate with any legal process and any law enforcement or other government inquiry. This means that we may provide information that we collect from Ordering Activity if that information is relevant to a court subpoena or to a law enforcement or other government investigation, provided this is permissible under applicable data protection law.

If Ordering Activity has any questions, requests, comments or concerns regarding this Privacy Policy, please email us at [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com) or by sending a letter to Trend Micro Privacy Program, Trend Micro Incorporated, c/o Legal Department, 225 East John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA.