



TREND MICRO INCORPORATED
Managed Service Provider Agreement ("MSP Agreement")

MSP Reseller

Name: _____
Address: _____
Telephone: _____
Fax: _____

Trend Micro Incorporated
("Trend Micro")
10101 North De Anza Blvd
Cupertino, CA 95014

MSP Distributor

Name: _____
Address: _____
Tel: _____
Fax: _____

List Trend Micro Product below	Estimated # of users in 1 st month	Estimated # of users in 6 months	Estimated # of users in 12 months
1.			
2.			
3.			
4.			
5.			
Example: NeatSuite	<i>120 *</i>	<i>350 *</i>	<i>750 *</i>

* shall mean the total number of USERS of the Product or Service not the number of Customers

This First Page and the attached Trend Micro Managed Service Provider Agreement make up a binding legal agreement ("Agreement") between MSP Reseller and Trend Micro. The effective date ("Effective Date") of this Agreement shall be the date Trend Micro executes this Agreement.

Accepted and Agreed To:

MSP RESELLER

By: _____
Name: _____
Title: _____
Date: _____

TREND MICRO INCORPORATED

By: _____
Name: _____
Title: _____
Date: _____

(This is the "Effective Date")

1. DEFINITIONS

"Derivative Works" means a revision, enhancement, modification, translation, abridgment, condensation, expansion or any other form in which the Licensed Software may be recast, transferred or adapted, which, if used without the consent of Trend Micro, would constitute a copyright or patent infringement.

"Level One Support" shall mean that MSP Reseller shall provide (i) information, by telephone, facsimile and email to MSP End Customers regarding the installation and operation of the Product, and (ii) Virus Pattern Updates to MSP End Customers promptly after Trend Micro makes such Virus Pattern Updates available to MSP. Level One Support also requires that MSP Reseller have a support center manned with sufficient virus alert technical/support contact technicians in order to respond to virus alerts from Trend Micro.

"MSP Distributor" means an MSP authorized Trend Micro distributor in North America.

"MSP End Customer" means a person or entity that ultimately purchases a Product or Service from MSP Reseller for their use rather than resale or distribution this differs from a "User" in that one Customer may have numerous "Users" for the Product or Service.

"MSP End Customer Agreement" means an agreement that must be executed between MSP Reseller and the MSP End Customer for the provision of Product or Services, in printed form that contains terms and conditions covering the Product and/or Service that include (in substance) those attached hereto as Appendix I and which is incorporated by reference herein as if fully set forth at length.

"Product" means the Trend Micro software products, including Product Updates and its applicable documentation.

"Product Updates" means new versions of the Product released by Trend Micro during the term of this Agreement that contain bug fixes and/or enhancements. Product Updates are typically designated by a change in the version number to the right or left of the decimal point.

"Provider" shall mean Trend Micro.

"Service" means the Trend Micro services products and any other licensed software developed and marketed by Trend Micro and any update, improvement, correction, modification, revision, and new versions of such software from time to time as delivered to MSP Reseller.

"Usage Report" means the report provided by MSP Reseller to MSP Distributor each month that provides the total number of Users, as applicable, to which MSP Reseller provided the Product or Service during such month. Information included within the report shall consist of a minimum of the following: (i) the Product or Service, (ii) the MSP End Customer, company or individual's name (iii) the number of Users serviced for such MSP End Customer, (iv) the date service began for such Users, (v) the city/state/zipcode and country where the MSP End Customer is located, as more fully set forth herein under Appendix II and which is incorporated by reference herein as if fully set forth at length.

"User" shall mean each and every electronic account through which electronic messages can be sent or received, which account (i) is owned or operated by a MSP End Customer or used by its employees or agents in the scope of their employment for MSP End Customer and (ii) receives the Product or Services, subject to a MSP End Customer Agreement for which Fees have been paid.

"Virus Pattern Updates" means the patterns used by Trend Micro's virus scanning products to detect and block computer viruses and which are updated and made available from time to time by Trend Micro.

2. LICENSE AND RELATED OBLIGATIONS

(a) **MSP Reseller License.** Subject to the terms and conditions of this Agreement, Trend Micro grants to MSP Reseller for the duration of the Term, the non-exclusive, non-transferable licenses only in the United States and Canada to: (i) reproduce and install the Product(s) as part of the Product or Services on the MSP Reseller

server/computer system(s) or servers/computer systems controlled by MSP Reseller for access and use by no more than the Users for which the MSP Reseller has paid; (ii) use and reproduce the Product and its associated user documentation solely for the purposes of providing the Product or Services and supporting MSP End Customers for access and use by no more than the Users; (iii) access and use the Service solely for the purposes of providing the Product or Services on the MSP Reseller server/computer system(s) to MSP End Customers and (iv) market the Product(s) and/or Service(s).

(b) Limitations. MSP Reseller may only offer security services using the Products and Services in the United States and Canada. MSP Reseller agrees that the Products and Services are protected by trade secret, copyright and patent laws, and international treaty provisions. MSP Reseller acknowledges that no title to the Products or Services or any intellectual property therein is transferred to MSP Reseller and all title to, and ownership rights in the Products and Services will remain the exclusive property of Trend Micro. MSP Reseller does not acquire any rights to the Products or Services except as expressly set forth in this Agreement. MSP Reseller shall not attempt to modify, (except as may be authorized by Trend Micro), reverse compile, reverse engineer, translate, reconstruct, disassemble, incorporate into or with other software to create a Derivative Work of any part of the software portion of the Products in whole or in part, or authorize others to do any of the foregoing. MSP Reseller agrees that they will not attempt to or assist to circumvent any user limits set by the number of software license authorization keys for which all applicable fees have been paid to Trend Micro. Trend Micro reserves the right to take reasonable steps to prevent unauthorized access to, and use of, the Products. This Agreement is personal to MSP Reseller and MSP Reseller agrees not to transfer or assign any rights to the Products, Service or the user documentation to any third party. Trend Micro reserves the right to take reasonable steps to prevent unauthorized access to, and use of, the Products, Services or user documentation.

(c) Right to Use Trademarks. During the term of this Agreement, MSP Reseller is authorized by Trend Micro to use the Trend Micro trademarks solely in connection with the marketing, advertisement, and promotion of any Product or Service. Use of any Trend Micro Trademark by MSP Reseller will be allowed only in accordance with Trend Micro's reasonable written trademark policies in effect from time to time. MSP Reseller has not paid consideration for the use of the Trend Micro Trademarks, and nothing contained in this Agreement shall give MSP Reseller any interest in any of them. MSP Reseller hereby agrees that it will not register, acquire, use or maintain any domain names, host names or server names that include, or are similar to, words or terms that comprise a Trend Micro trademark. MSP Reseller agrees that it will not file trademark applications for, or register, any Trend Micro trademarks.

(d) Data Processing Facts. In consideration of MSP Reseller's payment of the applicable Fees, Trend Micro will perform the Service by processing IP addresses of emails sent to email accounts of MSP End Customers ("Sender Address Information") through an automated technology platform. Trend Micro shall keep Sender Address Information secure and confidential while on Trend Micro's systems and process this information only for purposes of performing the Service and improving related services and products, which may include sharing with affiliates and security partners Sender's Address Information that has been identified as the source of malicious or unwanted content. Trend Micro reserves title, ownership, and all rights and interest to any intellectual property or work product resulting from its use and analysis of Sender's Address Information.

(e) General Sales Obligations. MSP Reseller agrees to the following (i) make no false or misleading representation with respect to the Products or Services including all warranties and disclaimers; (ii) not publish or use any misleading or deceptive advertising material; and (iii) comply with all applicable laws, including but not limited to all applicable export laws and regulations.

3. DELIVERY, REPRODUCTION AND SUPPORT OF PRODUCTS AND SERVICES

(a) Delivery. Upon receipt of this Agreement signed by MSP Reseller and a purchase order from MSP Distributor, Trend Micro shall deliver to MSP Reseller a current version of the Product for use by MSP Reseller pursuant to its licenses granted herein and will work with Provider to activate the Service.

(b) Reproduction. MSP Reseller shall be responsible for reproducing the Product and applicable documentation and installing the Product onto its servers/computer systems for the Product or Services and working with Trend Micro to activate the Service. MSP shall also be responsible for entering into a written MSP

End Customer Agreement with each MSP End Customer prior to providing the Products or Services to such MSP End Customer.

(c) **Virus Pattern Updates/Product Updates.** MSP Reseller shall use commercially reasonable efforts to download and deploy Virus Pattern Updates promptly after they are made available on Trend Micro's website. When Trend Micro provides any Product Updates hereunder to MSP Reseller, MSP Reseller will use commercially reasonable efforts to incorporate such Product Updates into its next build of Product or Services. In any event, MSP Reseller will use commercially reasonable efforts to cease from using the prior version of the Product and to use only the most recent Product Update in Product or Services within forty-five (45) days after any such Product Update(s) is available from Trend Micro's website. In the event MSP Reseller is unable to install such new Update after using commercially reasonable efforts within the time frame provided in this section, Trend Micro shall continue to support the prior version of the applicable Product(s) for a period of no less than six (6) months from the date that new version Product(s) is made available on the Trend Micro website.

(d) **Support.** As a material condition of this Agreement, MSP Reseller shall provide MSP End Customers with Level One Support and Trend Micro shall make available to MSP Reseller Virus Pattern Updates and Product Updates.

4. COMPENSATION AND REPORTS

a) **Fees.** All payment terms for the license(s) granted or services provided hereunder shall be negotiated and agreed upon solely by and between MSP Reseller and the MSP Distributor. MSP Reseller acknowledges that it must present its order(s) to MSP Distributor, MSP Distributor will invoice MSP Reseller for the prices agreed upon between MSP Distributor and MSP Reseller, and MSP Reseller shall pay MSP Distributor in the required currency. MSP Reseller shall pay all applicable sales, use, withholding or other taxes based on the licenses and rights granted under this Agreement (except for taxes based on Trend Micro's net income). MSP Reseller shall pay all such taxes, assessments or charges without reduction in the fees charged by MSP Distributor. Under no circumstances will Trend Micro be responsible for any MSP's income tax, franchise tax, or any such tax liability. Trend Micro reserves the right to change the Fees upon thirty (30) days prior written notice.

(b) **Increasing Number of Users.** Subject to availability, MSP Reseller may at any time order from the MSP Distributor an increase to the number of Users for one or more of the Products licensed hereunder. Orders should be made by a purchase order sent to the MSP Distributor with a reference to this Agreement. The MSP Distributor will order from Trend Micro the increase in the Users on behalf of MSP Reseller. No terms and conditions of MSP Reseller's purchase order to the MSP Distributor or any other documents will be binding and the terms and conditions of this Agreement shall exclusively govern such increase in the number of Users.

(c) **Reports.** Within five (5) business days after the end of each calendar month, MSP Reseller shall provide (i) provide MSP Distributor with an accurate Usage Report as specified and defined herein and as set forth under Appendix II, (ii) and in a timely manner provide corresponding monthly purchase order to represent prior month usage of Trend Micro software or services. Such information may be used by MSP Distributor only in connection with billing MSP Reseller for the applicable Fees and/or providing a purchase order to Trend Micro. Trend Micro agrees that such information shall be considered Confidential Information as defined herein.

(d) **Invoices.** Upon receipt of each Usage Report from MSP Reseller, MSP Distributor will invoice MSP Reseller for the monthly Fees due to MSP Distributor. MSP Distributor shall establish payment terms that govern MSP Reseller.

(e) **Audit of Records.** MSP Reseller shall maintain clear and accurate records containing all data reasonably required in order to verify compliance with this Agreement and the amounts owed and to be paid hereunder during the term of this Agreement and for a period of two (2) years thereafter. Trend Micro shall have the right, once per calendar year upon reasonable notice, to audit and analyze the relevant records of MSP Reseller during normal business hours to verify compliance with this Agreement. The audit shall be conducted at the expense of Trend Micro unless the results of such audit establish that inaccuracies in the Fees have resulted in underpayment of fees by more than five percent (5%) of the amount due, in which case MSP Reseller shall bear the expenses of such audit. If the result of such audit indicates that payment is due, MSP Reseller shall make such payment promptly.

5. NON-DISCLOSURE

(a) **Confidential Information.** Each party acknowledges that, from time to time, it may be exposed to certain information of the other party that the other party considers and treats as confidential and proprietary information and that is not generally known to the public ("Confidential Information"). Confidential Information means data and information of a proprietary or confidential nature disclosed by one party to the other under or relating to this Agreement, including, but not limited to, trade secrets, computer programs, product plans, business strategies, proprietary tools, methodologies, software, authorization keys, activation codes, and the serial numbers that accompany the Products. Any such Confidential Information shall be conspicuously marked or otherwise identified as "confidential" or "proprietary" at the time of disclosure, or which, due to its character or nature, a reasonable person in a like position and under like circumstances as the parties would treat it as secret and confidential. The receiving party agrees that it will take appropriate steps to protect such Confidential Information from unauthorized disclosure, that it will not disclose such information to any third party except its independent contractors and agents with a reasonable need to know who are under an obligation of confidentiality, and that it will not use any Confidential Information (other than as authorized by this Agreement) without the prior written consent of the disclosing party. The obligations with respect to Confidential Information shall continue for three (3) years from the termination date of this Agreement. The sales information of Products or Services is Confidential Information of Trend Micro, notwithstanding that it will be reported (disclosed) by MSP Reseller.

(b) **Exceptions.** Information shall not be deemed Confidential Information hereunder if such information: (i) is known to the recipient at the time of disclosure; (ii) hereafter becomes known (independently of disclosure by the providing party) to the recipient directly or indirectly from a source other than one having an obligation of confidentiality to the providing party; (iii) becomes publicly available or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the recipient; (iv) was independently developed by the recipient without use of the providing party's confidential information; (e) is disclosed by the receiving party to its professional advisors or pursuant to court order or other requirement imposed by law, provided that the originally disclosing party is given a reasonable opportunity to object to or restrict such disclosure to the extent practicable, and then such disclosure shall be permitted only subject to the terms and conditions of such order or other legal requirement.

6. INDEMNIFICATION

MSP Reseller will defend and indemnify Trend Micro and its suppliers against and hold Trend Micro and its suppliers harmless from, any and all claims, actions, damages, and expenses (including reasonable attorneys' fees and costs of litigation) based on third-party claims relating to (i) any negligent acts or omissions by MSP Reseller relating to its activities in connection with this Agreement, (ii) MSP services marketed by MRP Reseller under MSP Reseller's brand name or (iii) MSP Reseller's material misrepresentations relating to Trend Micro, the Products or Services. MSP Reseller shall be solely responsible for any claims, warranties, or representations made by MSP Reseller or MSP Reseller's employees.

7. TREND MICRO WARRANTY

(a) **Limited Performance Warranty.** (i) *For the Products.* Trend Micro warrants to MSP Reseller only for a period of thirty (30) days after the initial delivery of the Products that the Products as delivered by Trend Micro will substantially conform to Trend Micro's published specifications for the Trend Micro Products in all material respects at the time of delivery, (ii) *For the Services.* Trend Micro warrants that it will provide the Service with a professional manner with reasonable skill and care in substantial conformance with the Documentation, (iii) *Exclusive Remedy.* If the Products fail to so conform and MSP Reseller notifies Trend Micro in writing of such failure within the 30 day warranty period, or the Service does not conform to the Limited Warranty above as MSP Reseller's sole and exclusive remedy, at no charge to MSP Reseller, Trend Micro will use its commercially reasonable efforts (a) to promptly correct such nonconformity(s) and deliver the correction(s) to MSP Reseller or (b) to re-perform the Service.

(b) SUBJECT TO THE FOREGOING, THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR TERMS AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT. TREND MICRO EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATED TO THE PERFORMANCE, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PRODUCTS OR THE SERVICES HEREUNDER OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.

8. LIMITATION OF LIABILITY

(a) SUBJECT TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TREND MICRO OR ITS SUPPLIERS BE LIABLE TO MSP RESELLER FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOST OR CORRUPTED DATA, LOST PROFITS OR SAVINGS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PRODUCTS AND SERVICES HEREUNDER, OR THE RELATIONSHIP OF THE PARTIES, WHETHER OR NOT TREND MICRO HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED.

(b) IN NO CIRCUMSTANCES SHALL TREND MICRO OR ITS SUPPLIERS' MAXIMUM LIABILITY TO MSP RESELLER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES HEREUNDER EXCEED THE AMOUNT MSP RESELLER PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM UNDER THIS AGREEMENT.

9. TERM AND TERMINATION OF AGREEMENT

(a) Term. Unless terminated earlier as set forth in this Agreement, this Agreement shall continue in force for one (1) year from the Effective Date of the Agreement ("Initial Term"). At the end of the Initial Term, and at the end of each Renewal Term thereafter, this Agreement will automatically renew for an additional one (1) year period ("Renewal Term"), unless earlier terminated as set forth in this Agreement.

(b) Termination for Cause. Either party may terminate this Agreement at any time prior to the expiration of the then-current Term if the other party is in default with respect to any material provision of this Agreement and such failure or default continues unremedied for thirty (30) days after receipt of written notice.

(c) Termination Without Cause. After the Initial term, either party may terminate this Agreement at any time, without cause, upon at least sixty (60) days prior written notice.

(d) Automatic Termination. Either party may terminate this Agreement upon written notice, if the other party becomes insolvent, fails to pay its debts as they become due, or ceases business operations continuously for longer than thirty (30) days; or (ii) either party has a receiver, manager, administrative receiver or administrator appointed over all or any parts of its undertaking, assets or income. Trend Micro may terminate this Agreement upon written notice if (i) MSP Reseller breaches any material obligation related to Trend Micro's proprietary rights; or (ii) MSP Reseller fails to pay MSP Distributor any amounts due and owing, if such failure continues unremedied for thirty (30) days beyond the prescribed payment period set forth in Section 4 of the Agreement, except payments disputed in good faith.

(e) Effect of Termination. Upon termination of this Agreement: (i) except as set forth below, all licenses granted herein shall immediately terminate, and MSP Reseller shall cease from further reproduction or use of the Products or Service for itself or on behalf of its MSP End Customers, and return or destroy, and confirm such destruction of, all copies of the Products, user documentation and Confidential Information of Trend Micro in its possession. Except as otherwise permitted by law, MSP Reseller will cease to use any Trend Micro Trademark in

connection with promotion or advertising of Products or Service or otherwise, (ii) Only if this Agreement is not terminated due to MSP Reseller's breach, (1) MSP Reseller may continue to exercise the licenses or use the Service hereunder for sixty (60) days after the effective date of termination consistent with and subject to the terms and condition of this Agreement including but not limited to all payment provisions hereunder, and copies of Products installed and used for MSP End Customers may continue to be so used for 60 days after the effective date of termination consistent with and subject to the terms and condition of this Agreement including but not limited to all payment provisions hereunder. Each party agrees to continue its support obligations hereunder for such 60 day period. After such period, MSP Reseller must (i) return or destroy, and confirm such destruction of, all copies of the Products, user documentation and Confidential Information in its possession; and (ii) discontinue use of the Service. The termination of this Agreement will be without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses in this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable despite termination.

10. GENERAL

(a) **Assignment.** MSP Reseller shall not sell, transfer, delegate, or assign this Agreement or any rights, interests or obligations contained herein without the prior written consent of Trend Micro, such consent will not be unreasonably withheld. Any act by MSP Reseller in derogation of the foregoing shall be null and void. This Agreement shall benefit and be binding upon the parties to this Agreement and their respective permitted successors and assigns.

(b) **Waiver/Severability.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement. If any provision in this Agreement is found invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of this Agreement, which shall remain in full force and effect, and the Parties shall negotiate, in good faith, a substitute, valid and enforceable provision that most nearly effects the Parties' intent in entering into this Agreement.

(c) **Governing Law and Venue.** This Agreement and any disputes arising out of, or related to, this Agreement, its termination or the relationship of the parties will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. Each of the parties hereto consents to the in personam jurisdiction of any state or federal court in Santa Clara County, California and waives any objection to the venue of any such suit, action or proceeding in such courts. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of which is hereby expressly excluded. Without limiting its rights and remedies at law and equity, Trend Micro shall have the right to seek an injunction and similar equitable relief in any appropriate forum to stop and/or prevent any unauthorized use or distribution of the Trend Micro Products and/or intellectual property rights contained in the Trend Micro Products or Software.

(d) **Force Majeure.** Neither party shall be held liable for failure to fulfill its obligations under this Agreement, if the failure is caused by causes beyond the reasonable control of such party, and the term for performance shall be increased to a reasonable period of time.

(e) **Notices.** Any notice regarding non-performance, breach, termination, or renewal required or permitted to be given under this Agreement must be given in writing and be hand delivered or sent, postage prepaid, by means of a national overnight courier service addressed to: the address first stated in this Agreement, or at such other address as may be given by either Party to the other in writing. All other notices may be sent by regular mail. All notices will be deemed to have been given and received on the earlier of actual delivery or five (5) days from the date of deposit to a US depository site or date of deposit with overnight courier.

(f) **Entire Agreement.** This Agreement, together with any attachments and appendixes, represents the complete agreement and understanding of the parties with respect to the subject matter herein, and supersedes any other agreement or understanding, written or oral, including the terms and conditions of Company's purchase order for the services provided herein which shall not be binding. This Agreement may be modified only through a written instrument signed by both parties.

(g) **Writing.** Any reference in this Agreement to "writing" or similar expressions includes a reference to facsimile transmission and electronic mail.

(h) **Headings.** The heading in this Agreement are for convenience only and shall not effect its interpretation.

(i) **Waiver of Jury Trial.** THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE PARTIES. EACH OF THE PARTIES ACKNOWLEDGE AND AGREE THAT EACH HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS AGREEMENT) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH IN ENTERING INTO THIS AGREEMENT.

(j) **No Third Party Beneficiaries.** This Agreement is entered into solely between, and may be enforced only by the Parties hereto. This Agreement shall not be deemed to create any rights, remedies, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties, including without limitation employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

(k) **Relationship of Parties.** The relationship of the Parties is solely that of independent contractors, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, fiduciary, partnership, and/or any other business relationship. Each Party will, at all times during the term of this Agreement, act as, and represent itself as an independent contractor, and not an agent or employee of the other Party.

(l) **Survival.** Upon termination of this Agreement, any provision of this Agreement which contemplates performance subsequent to any termination, or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

(m) **Read and Understood.** Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms.

End of Terms and Conditions

Appendix I

Suggested Form of MSP End Customer Agreement

1. The agreement will provide for a non-exclusive license/right to use the Product and Service as part of the Product or Service, and not the sale or transfer of ownership of the Product or Service or any intellectual property rights therein. The agreement will provide that MSP End Customer acknowledges that it has no right or license to access or use the Product or Service and that only MSP Reseller may access or use the Product or Service on behalf of MSP End Customer in accordance with terms and conditions set forth in the agreement between MSP Reseller and Trend Micro.
2. The agreement must state that MSP End Customer's use of the Product or Service as part of the Product or Service is not error free or uninterrupted.
3. The agreement must have appropriate Federal Acquisition Regulations (FARS/DFARS) notices to protect Trend's ownership in and to the Product or Service and intellectual property rights therein.
4. The agreement must restrict the MSP End Customer from decompiling or disassembling or reverse engineering the Product or Service.
5. The agreement must have a limitation of liability that excludes consequential, incidental, special and punitive damages that covers Trend (either named, or identified in a generic manner (e.g., neither MSP Reseller nor its suppliers/licensors are liable for....., etc.)).
6. The agreement must not make any representation, warranty or commitment on behalf of Trend Micro or otherwise impose any liability upon Trend Micro.
7. The agreement must provide that MSP End Customer agrees that Trend Micro shall be a third party beneficiary of the Agreement between MSP Reseller and MSP End Customer.

Upon Trend's request(s), which may be made from time to time, MSP Reseller will provide Trend Micro with a copy of its MSP End Customer Agreement used for/with the Product or Service in order to ensure compliance with Section 3(b).

Appendix II

Suggested Form of Usage Report for MS Excel

Trend Micro Usage Report Template (Sample only)

Name of MSP/Reseller:												
Distributor:												
Report Date:												
End Client	Sign-up Date	Usage Begin Date	Usage End Date	Product	Users	City	State	Zip	Country	Price Per User		Subtotal
Company A	1/1/2007	1/1/2007	1/31/2007	OSCE	500				USA	\$1.00		\$500.00
Company B	1/1/2007	1/1/2007	1/31/2007	IMSS	250				USA	\$1.00		\$250.00
Company C	1/1/2007	1/1/2007	1/31/2007	IWSS	250				USA	\$1.00		\$250.00
Company D	1/1/2007	1/1/2007	1/31/2007	SMEX	500				USA	\$1.00		\$500.00

Total Users: 1,500

Total: \$1,500.00