



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

MSP Reseller

Name: _____
 Address: _____
 City, State, Zip: _____
 Telephone: _____
 Facsimile: _____

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

MSP Distributor - Identify your Distributor

Name: **Ingram Micro**
 Address: **1759 Wehrle Drive**
 City, State, Zip: **Williamsville, NY 14221**
 Telephone: **800-456-8000 ex 67157**
 Facsimile: **716-616-1280**
 Contact person: **Rob Froese**

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: Deep Security	120 *	350 *	750 *

* 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. Upon execution the complete Agreement must be returned to Trend Micro.

IN WITNESS WHEREOF and INTENDING TO BE BOUND, the parties have executed this Agreement through their respective authorized representatives and Corporate Officers as of the Effective Date.

MSP RESELLER

Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

TREND MICRO INCORPORATED

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

(This is the "Effective Date")

1. DEFINITIONS

“Cloud Services” means any Trend Micro-hosted Software as a Service (SaaS), Cloud computing services, and other similar services developed, operated, and/or maintained by Trend Micro, and includes all Technology made available as part, or in support, of Cloud Services. Cloud Services also include the Trend Micro-hosted services portion of any Program-Based Services. Rather than Object Code versions of software provided to and installed by MSP Reseller, Cloud Services are comprised of web-based services hosted by Trend Micro which are made available to and accessed by MSP Reseller at a designated website or IP address login or by such other means as may be designated, enabled, or provided by Trend Micro.

“Customer-Installed Software” means the Object Code version of a Trend Micro commercially-available software program, routine, or algorithm which is licensed to MSP Reseller pursuant to Section 2 by Trend Micro for installation on Computers owned or controlled by MSP End Customer, and for the avoidance of doubt, the term Customer-Installed Software also includes the Customer-installed Object Code portions of Program-Based Services. Customer-Installed Software also includes all Documentation and Updates made available to MSP End Customer with respect thereto in accordance herewith. In no event or circumstance will the term “Customer-Installed Software” mean a Source Code version of any Trend Micro software or otherwise include any Source Code in connection therewith.

“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. Or, as applicable: (a) any computer software (whether in source or object code form) port, work, product, service, improvement, modification, alteration, enhancement, new version, translation, adaptation, design, concept, materials and documentation, in any medium, format or form whatsoever, that is derived in any manner, directly or indirectly, from a pre-existing work or any part or aspect thereof or that utilizes or incorporates such a pre-existing work or any part or aspect thereof; (b) all “Derivative Works,” as defined in the copyright law of the United States; and (c) all materials and documentation related to each of the foregoing. A Derivative Work also includes a compilation that incorporates such pre-existing work.

“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 shall have and maintain a support center manned with sufficient virus alert technical/support contact technicians in order to respond to virus alerts from Trend Micro.

“Maximum Computers” means with respect to all Products which are licensed or provided by Trend Micro on a per Computer or node basis for personal computers, servers, workstations, handheld personal computers, cellular or mobile telephone or other digital electronic devices (collectively **“Computers”**), the total number of Computers for which fees have been paid to the Authorized MSP Reseller. Multiple computers that share processing power or operate in a networked configuration as a single logical computer, such as a “server farm” or similar arrangement, constitute multiple Computers for purposes hereof.

“Maximum Users” means, for server-based Trend Micro Software, the total number of Users for which license fees have been paid. “User” means each MSP End Customer, employee or independent consultant who uses, or has access to, a Computer (including a shared Computer) to perform work for MSP End Customer, which Computer is connected directly or indirectly to the server(s) on which the Trend Micro Software is installed. The Maximum Users for the Trend Micro Product(s) may be increased as set forth herein.

“MSP Distributor” or “Distributor” means an MSP authorized Trend Micro distributor in United States.

“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 Trend Micro 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.

“**Object Code**” means the fully compiled binary version of a software program that can be installed on and executed by a computer or other device and used without further compilation.

“**Party**” or “**Parties**” means only each or all of the signatories to this Agreement and their respective successors and permitted assigns.

“**Perpetual Period**” means a license granted hereunder which, subject to earlier termination in accordance herewith, extends for an indefinite period of time with respect to Customer-Installed Software only if such Perpetual Period is offered by Trend Micro therefor and designated in purchase order as being “Perpetual.” For the avoidance of doubt, Cloud Services and Cloud Services portions of Program-Based Services may never be provided or licensed for a Perpetual Period hereunder, it being understood and agreed that each of the foregoing are always licensed for a Subscription Period only.

“**Premium Support Services**” shall have the meaning set forth herein.

“**Products**” means collectively: (a) Customer-Installed Software and any modified, Updated, or enhanced versions thereof; (b) Program-Based Services; and (c) Cloud Services. The term Product shall also include all Documentation therefor.

“**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.

“**Program-Based Services**” means the service-based Products (including Email Reputation Services, Outbreak Prevention Services and other services) which include a significant element of Cloud Services, but which also include an element of Customer-Installed Software.

“**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.

“**Source Code**” means the human-readable version of a software program.

“**Subscription Period**” shall mean all or any part of the twelve (12) month period beginning on the Delivery Date of new or additional units of Product (each a “**Subscription**”), during which period MSP End Customer has the right to use the Product; *provided, however*, the Subscription Period may never exceed the expiration of the Term.

“**Subscription Renewal**” shall mean the right to use a Product for all or any part of an additional twelve (12) month period (each a “**Subscription Renewal Period**”) beginning on the day immediately following the expiration of the initial Subscription Period or after the expiration of a Subscription Renewal Period, subject always to MSP End Customer purchasing a Subscription Renewal to such Product in accordance herewith; *provided, however*, such Subscription Renewal Period may never exceed the expiration of the Term.

“**Subscription Services**” means any Trend Micro Program-Based Services, Software as a Service (SaaS), Cloud computing services, and other similar services which are designated by Trend Micro as “Subscription Services” and which are provided on an annual subscription basis to MSP End Customer of Trend Micro and where use, support and maintenance fees are paid only for such subscription period and no right to use or receive Subscription Services extends past the expiration of such subscription period. Subscription Services are predominately or solely comprised of web-based services offered by Trend Micro rather than Programs/software installed by Trend Micro and/or its Authorized Resellers.

“**Updates**” means and includes new Object Code versions of electronic files, code, routines, processes, white lists, black lists, pattern files and definitions, and heuristics scripts that may used by Customer-Installed Software 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 as well as improvements, corrections, modifications, revisions, bug fixes and/or other enhancements to, or for use in

connection with, Customer-Installed Software. The term "Updates" specifically excludes and does not include releases that contain significant new features, capabilities, or functionality that Trend Micro determines to be new, different or other products which Trend Micro makes generally available to the public for new or additional consideration. Updates released by Trend Micro from time to time and at any time replace, or patch and will become part of, previously licensed copies of Customer-Installed Software and will not increase the Virtual Machines, Maximum Users, Maximum Computers, or otherwise create additional copies or licenses of Customer-Installed Software. While some Updates may be automatically be made available to and downloaded by MSP Reseller, MSP Reseller acknowledges that it must routinely download other Updates from Trend Micro's website for the effective operation of the Customer-Installed Software and some Updates may require the deployment of new scan engines.

"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/zip code 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.

"Virtual Machines" are software implementations or emulations of a machine (*i.e.*, a computer) that executes computer programs similar to a unique, physical machine and Customer-Installed Software which is designated by Trend Micro for use with virtualization technologies may be installed and used within only one virtual (or otherwise emulated) hardware system as licensed by Trend Micro from time to time. For the avoidance of doubt, license fees are required for each Virtual Machine that is connected directly or indirectly to the network server(s) on which the Customer-Installed Software is installed.

"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 and payment of the applicable fees to Trend Micro, Trend Micro grants to MSP Reseller and MSP Reseller accepts for the duration of the Term, a non-exclusive, non-transferable, limited, and revocable license and right 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) utilize best commercial efforts to market the Product(s) and/or Service(s).

(b) **Limitations.** MSP Reseller shall 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. No title to the intellectual property in the Trend Micro Products is transferred to MSP Reseller. Title and full ownership rights to the Trend Micro Products, except for the documentation media on which the Trend Micro Software is delivered to MSP Reseller will remain the exclusive property of Trend Micro or its suppliers. MSP Reseller does not acquire any rights to the Trend Micro Products except as expressly set forth in this Agreement. 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, the Products. MSP Reseller agrees that they will not attempt to circumvent any user limits set by the number of Product license authorization keys for which all applicable fees have been paid.

No shrink-wrap, click-wrap, or other terms and conditions or agreements ("Additional Terms") provided with the Trend Micro Software shall be binding on Trend Micro, even if use of the Trend Micro Software requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by MSP Reseller in their entirety. Any copies of the Trend Micro Software reproduced as authorized hereunder must contain the same proprietary notices that appear on and in the Trend Micro Software as provided by Trend Micro. MSP Reseller may only offer virus-scanning services using the Trend Micro Products with and as part of Bundled/Hosted Service in the Territory.

(c) No Reverse Engineering. MSP Reseller shall not attempt to modify, (except as may be authorized by Trend Micro), sublicense, rent, lease, loan, auction, reverse compile, reverse engineer, translate, reconstruct, disassemble, incorporate into or with other software or to create a Derivative Work of any part of the software portion of the Products in whole or in part, or otherwise attempt to derive source code or authorize others to do any of the foregoing prohibited acts. MSP Reseller agrees that they will not nor assist a third party to attempt or 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, assign or provide 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.

(d) Use Exclusions. Products are not designed nor intended for use in: (i) the design, construction, operation or maintenance of any nuclear facility; (ii) aircraft navigation, communications, or operating systems; (iii) air traffic control systems, (iv) operating life-support or life critical medical equipment; or (v) any other equipment or systems in which the circumvention or failure of the Product could lead or contribute to death, personal injury, or physical property or environmental damage and Trend Micro disclaims and excludes any license right, as well as any express or implied warranty of fitness, for such uses.

(e) 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 Trend Micro Product or Service. Trend Micro shall retain all right, title, and interest in the Product or Service and Documentation and associated therein. 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. Trend Micro hereby reserves all rights not expressly granted to MSP Reseller in this Agreement. 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.

(f) Feedback. MSP Reseller may from time to time provide suggestions, comments or other feedback to Trend Micro with respect to improvement or enhancement of any or all Products or the provision of Maintenance and Premium Support Services (collectively "**Feedback**"). MSP Reseller agrees that all Feedback provided by MSP Reseller is and shall be given entirely voluntarily and on a non-confidential basis. Feedback, even if inadvertently designated as confidential by MSP Reseller, shall not create any confidentiality obligation hereunder for or upon Trend Micro and Trend Micro shall be free to use, disclose, reproduce, license or otherwise modify, distribute, and exploit the Feedback as Trend Micro sees fit, without obligation, compensation, or restriction of any kind or nature. MSP Reseller will not provide Feedback that is subject to any third party Intellectual Property Right or otherwise requires that any product, technology, service or documentation incorporating or derived from such Feedback to be licensed from or otherwise shared with any third party.

(g) 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.

(h) Scanning Data. Subject to the terms and conditions of this Agreement, Trend Micro Products may operate by forwarding certain data (“Scanning Data”) to Trend Micro owned or controlled servers for scanning. These servers employ proprietary technology to identify and then screen malicious or potentially unwanted content based on user-proscribed parameters. By using any Trend Micro Products and by accepting this Agreement MSP Reseller represents and warrants that MSP Reseller: (i) is legally permitted and authorized to access, and to provide Trend Micro with access to, the Scanning Data and agree to provide Trend Micro with evidence of such authorization upon request; (ii) authorizes Trend Micro to act as MSP Reseller and has the authority to appoint Trend Micro as MSP End Customer’s data processing agent and at their discretion when performing Trend Micro Software-Based Services; (iii) undertakes to inform the source of the Scanning Data, to the extent required by local law, of the scope and purpose of Trend Micro Software-Based Services, which may entail the transfer of Scanning Data to servers located outside of the jurisdiction where MSP Reseller or MSP End Customer are located; (iv) is responsible for deciding if and how MSP Reseller and/or MSP End Customer use Trend Micro Software-Based Services; and (v) will, together with MSP End Customer, otherwise use the Trend Micro Software-Based Services only in a legal manner. In the event of any breach of the representation and warranty set forth herein. Trend Micro may, without prior notice and without prejudice to its other rights, suspend the performance of Trend Micro Software-Based Services until MSP Reseller can show to Trend Micro's satisfaction that any such breach has been cured.

(i) Information Collection. In addition to Product registration information, MSP Reseller understands and agrees that Trend Micro must process and store certain information about MSP Reseller’s network and equipment to provide Maintenance and services to its customers. To improve and provide Maintenance, Premium Support Services, and related support services as well as use for improvement to its Products, Trend Micro may also periodically upload information (which does not identify MSP Reseller or MSP’s End Customers) periodically from Products about Product usage, detected malware or potentially unwanted files and may use service traffic to improve Trend Micro’s data bases and heuristics. MSP Reseller agrees that Trend Micro may: (a) use uploaded data from Products to improve products and services; (b) share data that has been identified as malicious or unwanted content with Trend Micro Affiliates and security partners to the extent it is anonymous and not identified with MSP Reseller or their Customers and is not medical, financial, or personally identifiable information under Applicable Law; and (c) use and disclose uploaded data for analysis or reporting purposes only if any such use, sharing or disclosure does not identify MSP Reseller or their Customers or include any information that is personally identifiable information under Applicable Law. Trend Micro reserves the title, ownership and all rights and interest to any Intellectual Property or work product resulting from its use and analysis of such information. Trend Micro states that the Products are not subject to the Health Insurance Portability and Accountability Act (as per 65 FR 82476), or to the Gramm-Leach-Bliley Act (as per 16 C.F.R. §314.2(d)), and more specifically, Trend Micro informs MSP Reseller that Products are not designed to capture or retain any medical, financial, or personally identifiable information when used by MSP Reseller in accordance with applicable Documentation.

(j) Security Acknowledgement. Content Security Updates, service databases, heuristics and definitions are designed to identify, block and/or remove applications, messages and files that may compromise productivity or the performance and security of MSP Reseller and/or MSP’s End Customers’ networks. While Trend Micro uses reasonable efforts to properly identify applications and files for detection, given the nature and volume of malicious and unwanted electronic content, Trend Micro cannot guarantee that Trend Micro Products will properly detect or clean applications and files that are malicious or that MSP Reseller and/or its MSP’s End Customers does not use or want. MSP Reseller acknowledges, accepts, represents that MSP Reseller and the applicable MSP’s End Customers acknowledges, and accepts the risk that the Trend Micro Products may cause welcome as well as unwelcome files, email or URLs or other web content to be screened and blocked and that rejected files may not be recoverable. To improve its products, Trend Micro may also upload information periodically from installed Trend Micro Software about product usage, detected malware, or potentially unwanted files and use service traffic to improve its data bases and heuristics. Trend Micro reserves the title, ownership and all rights and interest to any intellectual property or work product resulting from its use and analysis of such information. MSP Reseller understands and agrees that the success of MSP Reseller’s security efforts are dependent on a number of factors solely under MSP Reseller’s control and responsibility including: (a) the design, implementation and use of a number of hardware and software security tools in a coordinated effort to manage present and future 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 (including any personally identifiable information/data); (c) the backup and recovery of any system, database

and any stored data; and (d) diligently and promptly downloading and installing all Updates purchased by and available to MSP Reseller.

3. MSP RESELLER OBLIGATIONS

(a) General Sales Obligations. MSP Reseller agrees to and shall abide by the following material obligations and Reseller shall:

(i) make no false, deceptive or misleading representation with respect to the Trend Micro Products, Services or Trend Micro;

(ii) not publish any misleading, false or deceptive advertising material with respect to the Trend Micro Products or Services that is or might be detrimental to Trend Micro or the public, including but not limited to disparagement of Trend Micro or the Trend Micro Products or that are inconsistent with the literature distributed by Trend Micro, including all warranties and disclaimers contained in such literature;

(iii) use best commercial efforts to learn, promote and market the Trend Micro Products or Services in accordance with this Agreement;

(iv) conduct business in a manner that does not reflect unfavorably on the Trend Micro Products, Services or the good name, goodwill, and reputation of Trend Micro;

(v) If requested, MSP Reseller shall provide Trend Micro with a non-binding forecast of the quantity of each Trend Micro Product or Service that it expects to sell during such quarter within 15 days prior to the beginning of each calendar quarter;

(vi) comply with all applicable laws, including but not limited to all applicable export laws and regulations; and

(vii) within three (3) months of the Effective Date of this Agreement, MSP Reseller will cooperate with Trend Micro in drafting and releasing a joint press release relating to the business relationship under this Agreement. The content and timing of the joint press release will be mutually agreed upon.

(b) Cloud Services. With respect to Cloud Services, MSP Reseller acknowledges and agrees that it is solely responsible for all access and activity of and by MSP Reseller and any MSP End Customer and shall abide by and comply with all Applicable Laws in connection with MSP Reseller's access and use of any Cloud Service, including those related to personally identifiable information and data privacy, international communications and the transmission of technical or personal data.

(i) MSP Reseller agrees to and shall: (a) notify Trend Micro immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Trend Micro immediately and use reasonable efforts to stop immediately any copying or distribution of any Technology that is known or suspected by MSP Reseller and/or any User; and (c) not impersonate another Trend Micro client or user or otherwise provide false identity information to gain access to or use of any Cloud Service.

(ii) **Additional Limitations – Cloud Services.** With respect to Cloud Services, MSP Reseller shall not: (a) license, sublicense, sell, resell, transfer, assign, distribute rent, loan, auction, or otherwise commercially exploit or make available any Cloud Service or its Technology to any third party except to MSP Reseller and MSP End Customers; (b) except as may be expressly permitted herein, permit any third party, excluding MSP End Customers, to benefit from the use or functionality of any Cloud Service via timesharing, service bureau arrangements or otherwise permit either direct or indirect access or use of any Cloud Service by any third party excluding MSP End Customers; (c) modify or make Derivative Works based upon the Cloud Service or its Technology; (d) interfere with or disrupt the integrity or performance of Cloud Services or the Technology; (e) attempt to gain unauthorized access to any Cloud Service or its Technology; (f) access any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any benchmarking or any other competitive purpose; or (g) reverse engineer or access the Cloud Service in order to: (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Cloud Service.

(c) **Non-Exclusive Relationship.** Trend Micro reserves the right from time to time and in its sole discretion, inside or outside the Territory, to increase or decrease the number of authorized resellers, distributors, OEMs, VARs and managed service providers of Trend Micro Products, and to distribute Trend Micro Products using its own personnel or independent sales representatives or via any other distribution channel or means. MSP Reseller also reserves the right from time to time and in its sole discretion, inside or outside the Territory, to offer products of other vendors, including products of other vendors similar to Trend Micro Products.

(d) **Product/Services End-of-Life.** Trend Micro reserves the right to discontinue the publication, sale, distribution, subscription, and/or licensing of any or all Products at any time and for any reason (herein “End-of-Life”) by announcement or publication of notice to the general public or revision of its price list. If Trend Micro announces or publishes End-of-Life for any Product, then and in each such event, no additional or new publication, sale, distribution, subscription, or license of the subject Product or Service will be available from and after the stated effective date of such End-of-Life. Further, Trend Micro will continue to make available Maintenance and Premium Support Services for any Product which is the subject of End-of-Life for such period as is stated in the announcement or notice, such period will be no less than twelve (12) months.

4. 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. In order to allow Trend Micro to provide Maintenance and/or Premium Support Services in accordance with this Agreement, as a condition precedent thereto, MSP Reseller agrees without compensation to, without limitation: (a) designate and make available to Trend Micro as reasonably necessary, an appropriately qualified technical lead individual employed by MSP Reseller; (b) provide Trend Micro with all reasonably necessary, accurate and detailed information in respect thereto (subject to relevant security and confidentiality restrictions); (c) conduct any diagnostic and test activities reasonably requested by Trend Micro; (d) develop and implement back-up plans and security safeguards with respect to information, data and systems; and (e) cooperate fully and in a timely manner with Trend Micro as reasonably requested by Trend Micro.

(e) **Data Privacy.** Trend represents that the Trend Micro Products licensed hereunder, when used in accordance with its Documentation provided by Trend, are not designed to capture or retain any personal, medical, financial or private information and does not send or provide to Trend, or otherwise require the use or disclosure of any personally identifiable medical or financial information (collectively referred to as “PII”) as defined in Health Insurance Portability and Accountability Act (“HIPAA”) per §65 FR 82476, or the Gramm-Leach-Bliley Act (“GLBA”) per §16 C.F.R. §314.2(d); therefore, Trend Micro is not subject to the Health Insurance Portability and Accountability Act (as per 65 FR 82476), or to the Gramm-Leach-Bliley Act (as per 16 C.F.R. §314.2(d)), or the Children’s Online Privacy Protection Act of 1998 (“COPPA”), or the Federal Educational Rights & Privacy Act of 1974 (“FERPA”), the Children’s Internet Protection Act (“CIPA”). MSP agrees that is will not in any event or

circumstance intentionally send or make available to Trend any PII. MSP and MSP Customers are solely responsible for complying with such statutes, rules and regulations and other similarly enacted laws and regulations

5. 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 and terms 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 charged by Trend Micro upon thirty (30) days prior written notice.

(b) **Increasing Number of Users/ Virtual Machines.** Subject to availability, MSP Reseller may at any time order from the MSP Distributor an increase to the number of Users or Virtual Machines for one or more of the Products licensed hereunder as applicable. 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 or Virtual Machines 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 or Virtual Machines.

(c) **Reports.** As a material obligation of MSP Reseller, within five (5) business days after the end of each calendar month, MSP Reseller shall provide without notice: (i) MSP Distributor with an accurate Usage Report as specified and defined herein and as set forth under Appendix II; and (ii) 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. In the event MSP fails to provide the monthly Usage Report when due, Distributor shall have the right to invoice MSP in the highest amount estimated by Distributor or Trend Micro in their sole discretion for MSP's monthly usage. Trend Micro agrees that such information shall be considered Confidential Information as defined herein. Failure to timely tender the monthly Usage Report shall constitute grounds for termination of this Agreement.

(d) **Invoices.** Upon receipt of each Usage Report and Purchase Order from MSP Reseller, or if MSP fails to provide a timely Usage Report, the estimated amount as determined by Distributor or Trend Micro, MSP Distributor shall invoice MSP Reseller for the monthly Fees due to MSP Distributor. MSP Distributor shall establish payment terms that govern MSP Reseller. As a material obligation of this Agreement, MSP Reseller shall abide by and fulfill the terms as agreed upon between the MSP Distributor and Reseller.

(e) **Product Pricing.** MSP Reseller shall have the sole right and discretion to establish the prices at which it offers and/or sells the Trend Micro Products to the End Users or Customers.

(f) **Audit of Records.** MSP Reseller agrees to create, retain, and provide to Trend Micro and its auditors accurate written records, system tool outputs, and other system information sufficient to provide auditable verification that Reseller is in compliance with this Agreement, as well as all applicable licensing terms and conditions. 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.

(g) **Perpetual License.** Notwithstanding the foregoing, certain Customer-Installed Software (but not any Cloud,

Services portions thereof) may be designated by Trend Micro as being provided pursuant to a Perpetual Period license and will only be licensed hereunder for a Perpetual Period hereto. With respect to any Customer-Installed Software which is licensed hereunder for a Perpetual Period, MSP Reseller understands and agrees that Maintenance and access to any Cloud Services portions of related thereto will only be provided for one (1) year after the date the MSP Reseller first receives the Customer-Installed Software registration key(s), activation code(s), the Product serial number(s) or order confirmation, whichever is earlier. In order to continue to receive Maintenance of Customer-Installed Software, or access and use of any Cloud Services portions related thereto, after the expiration of the foregoing one (1) year period MSP Reseller must purchase Renewal Maintenance as set forth herein.

6. 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 five (5) 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; or
- (v) 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.

(c) **Injunctive Relief.** MSP Reseller and Trend Micro agree that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character, the Trend Micro would be irreparably harmed by any disclosure of the Confidential Information in violation of this Agreement, and that the use of the Confidential Information for the business purposes of the MSP Reseller, or any third party, other than for the benefit of the Trend Micro, would enable the MSP Reseller or other third party to compete unfairly with the Trend Micro. For these reasons, the MSP Reseller waives any claim or defense that the Trend Micro has an adequate remedy at law, and the Parties agree that the Trend Micro shall be entitled to seek equitable relief to prevent further use and/or disclosure in addition to all other remedies available to the Trend Micro at law or in equity for any breach of this Agreement by MSP Reseller. In the event any such injunction is entered, MSP Reseller shall promptly pay or reimburse Trend Micro for any costs and reasonable expenses (including, but not limited to, reasonable attorneys' fees) actually incurred by the Trend Micro in obtaining such specific enforcement. The remedy provided in the immediately preceding sentence shall be in addition to, and not in limitation or exclusion of, any other rights and remedies available to the Trend Micro

hereunder, at law, or in equity.

7. 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 MSP 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.

8. 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. Each such warranty is referred to as "Limited Warranty".

(b) **No Disabling Device Limited Warranty.** Trend Micro warrants to MSP Reseller only that: (a) it has taken reasonable steps in accordance with its standard procedures to test Products for which a license is granted hereunder for Disabling Code; (b) that to Trend Micro's best knowledge, each Product licensed hereunder is free of Disabling Code as of the Delivery Date; and (c) that Trend Micro will continue to take such reasonable steps with respect to future Updates to the Products. "Disabling Code" is defined as computer instructions, routines, or subroutines that are designed and programmed to deny use of or alter or destroy the Product(s) and the term also includes instructions that may cause the Products to self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function. MSP Reseller agrees to take reasonable steps in its other procurements and in the operation of its operating environment to monitor for and detect the presence of Disabling Code from other sources. The foregoing warranties of Trend Micro notwithstanding, MSP Reseller understands and agrees that certain Products contain and require passwords, registration or license keys, authorization codes, or similar devices: (1) which are required for activation each or all copies or usage of a Product; (2) which require renewal for continued use and operation of a Product after expiration or termination of any right or license of use thereof; (3) which prevent access to downloads of Updates after expiration or termination of any right or license of use thereof; or (4) any virus or malware disabling feature which form a part of the Product, and the Parties agreed that such passwords, registration or license keys, authorization codes, features, or devices is not restricted or prohibited by the terms of this Section or the Agreement and shall not be considered Disabling Code for purposes hereof.

(c) **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.**

(d) **DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN **SECTION 8(a)**, MSP RESELLER AGREES THAT TREND MICRO PROVIDES PRODUCTS “**AS IS**” WITHOUT ANY OTHER WARRANTY OF ANY KIND, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TREND MICRO EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THIS AGREEMENT OR ITS PERFORMANCE OR NON-PERFORMANCE HEREUNDER, THE PRODUCTS, MAINTENANCE, AND ANY PREMIUM SUPPORT SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, TITLE, QUALITY, ACCURACY AND NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OR OTHERWISE ARISING FROM A STATUTE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR ANY WARRANTY AGAINST INTERFERENCE WITH MSP RESELLER OR RESELLER'S CUSTOMER'S QUIET ENJOYMENT OF ANY PRODUCT. TREND MICRO DOES NOT WARRANT THAT: (1) THE PRODUCTS WILL BE CONTINUOUSLY AVAILABLE; (2) THE FUNCTIONS AND FEATURES CONTAINED IN THE PRODUCTS WILL MEET THE REQUIREMENTS OF MSP END CUSTOMER OR THAT PRODUCTS WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE OR OTHER NEEDS OR REQUIREMENTS; (3) THE USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL DEFECTS, PROBLEMS, BUGS OR ERRORS IN THE PRODUCTS WILL BE DETECTED OR CORRECTED; (4) THE PRODUCTS WILL DETECT ONLY, ANY, OR ALL SECURITY OR MALICIOUS CODE THREATS; OR (5) USE OF THE PRODUCTS WILL KEEP MSP END CUSTOMER'S NETWORK OR COMPUTER SYSTEMS FREE FROM ALL VIRUSES OR OTHER MALICIOUS OR UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY BREACHES. MSP RESELLER ACKNOWLEDGES THAT THE CLOUD SERVICES MAY BECOME UNAVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING SCHEDULED OR UNSCHEDULED MAINTENANCE, TECHNICAL FAILURE OF SOFTWARE, TELECOMMUNICATIONS INFRASTRUCTURE, OR THE INTERNET AND TREND MICRO GIVES NO WARRANTY WITH RESPECT THERETO.

9. **LIMITATION OF LIABILITY**

(a) SUBJECT TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SET FORTH IN SECTION 7 RELATING TO THIRD PARTY DAMAGES, BREACHES OF CONFIDENTIALITY AND EXCEPT FOR ANY UNAUTHORIZED USE OR DISTRIBUTION BY MSP AND/OR MSP CUSTOMER OF THE TREND MICRO PRODUCTS, 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.

10. **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 for Convenience. After the Initial Term, either party may terminate this Agreement at any time, without cause, upon at least sixty (60) days written notice. During the Initial Term, Trend Micro may terminate this Agreement at any time, without cause, upon sixty (60) days written notice.

(d) Automatic Termination.

This Agreement terminates automatically, with no further action, if:

- (i) MSP Reseller becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than thirty (30) days for reasons other than a strike, then Trend Micro may immediately terminate this Agreement on notice to MSP Reseller unless MSP Reseller immediately gives Trend Micro adequate assurance of the future performance of this Agreement; or
- (ii) Bankruptcy proceedings are commenced with respect to the MSP Reseller, and if this Agreement has not otherwise terminated, then Trend Micro may suspend all further performance of this Agreement until MSP Reseller assumes this Agreement and provides adequate assurance of performance thereof or rejects this Agreement pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the parties that this is an executory contract. Any such suspension of further performance by Trend Micro pending MSP Reseller's assumption or rejection will not be a breach of this Agreement, and will not affect Trend Micro's right to pursue or enforce any of its rights under this Agreement or otherwise; or
- (iii) Either party is liquidated or dissolved; or
- (iv) MSP Reseller breaches any material obligation related to Trend Micro's proprietary rights; or
- (v) MSP Reseller fails to pay MSP Distributor any amounts due and owing, at Trend Micro's sole option, if such failure continues unremedied for fifteen (15) days beyond the prescribed payment period set forth in the MSP Distributor 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.

11. U.S. GOVERNMENT USE. The Products may only be transferred to the U.S. Government with the prior written consent of an officer of Trend Micro and solely with "Restricted Rights", as that term is defined in the Department of Defense ("DOD") Supplement to the Federal Acquisition Regulations ("DFARS") in paragraph 252.227-7202.32 (c)(1) if to the DOD, or, if the Product is supplied to any unit or agency of the US Government other than DOD, the Government's rights in Product shall be no greater than those set forth in FAR 52.227-19(c)(1) or (c)(2), Commercial Computer software - Restricted Rights; or FAR 52.227-14, Rights in General Data Alternative III, as applicable. Contractor: Trend Micro Incorporated, 10101 N. De Anza Blvd., Cupertino, CA 95014. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Trend

Micro to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

12. 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. Any act by MSP Reseller in derogation of the foregoing shall be null and void and the MSP Reseller will remain obligated under this Agreement. 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. In the event that any provision of this Agreement in whole or in part conflicts with the governing law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be amended and restated by deleting or modifying the invalid or unenforceable provision to the minimum extent necessary to render such provision valid, enforceable, and, insofar as possible, consistent with the original intent of the Parties in accordance with Applicable Law. 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 to the fullest extent permitted by Applicable Law.

(c) **Applicable Laws.** Each Party agrees to comply with all U.S. and foreign federal, state, municipal, and local laws, statutes, ordinances, regulations, rules, treaties, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters, and other official releases (collectively “**Applicable Laws**”) applicable from time-to-time and at any time to such Party’s performance of its obligations and exercise of its rights hereunder, including, without limitation, any data privacy, trans-border data flow or data protection Applicable Laws governing such Party’s possession, transmission, or use of any personally identifiable information and each Party shall identify and procure any permits, certificates, approvals and inspections that may be required for its performance hereunder. Each Applicable Law shall include any amendment or modification to that law and any other law enacted in substitution of, or replacement for, that law.

(d) **Governing Law.** This Agreement (and any amendments hereto) and any questions, disputes, claims, causes of action, and proceedings based on, arising out of, or related to, this Agreement, or its validity, interpretation, construction, or termination or the relationship, rights, duties, or performance of the Parties arising from or related in any way hereto, will be governed by and construed in accordance with the laws of the State of California applicable to agreements entered into and to be performed wholly therein, excluding its conflicts of laws principles and rules. This Agreement will not be interpreted or governed by the Uniform Computer Information Transactions Act (UCITA) even if such is adopted or enacted as law in California or the United Nations Convention on Contracts for the International Sale of Goods, the application of each of which is hereby expressly excluded.

(e) **Jurisdiction and Venue.** The Parties mutually agree to and do hereby irrevocably submit and consent to the sole and exclusive *in personam* jurisdiction of: (i) the United States District Court for the Northern District of California, San Jose Division, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (ii) the Superior Court of Santa Clara County, California, and the Parties irrevocably covenant and agree that all questions, disputes, claims, causes of action, and proceedings based on, arising out of, or related to, this Agreement, or its validity, interpretation, construction, or termination or the relationship, rights, duties, and/or performance of the Parties shall be litigated and determined solely and exclusively in such courts, and each of the Parties waives and renounces any objection which it may now or hereafter have based on improper venue or *forum non conveniens* (or similar doctrine) to the conduct of any matter in such courts. Without limiting its rights and remedies at law and equity, Trend Micro shall have the right to seek an injunction and/or similar equitable relief in any appropriate forum to stop and/or prevent any unauthorized access, use or distribution of Products, Cloud Services, Technology, and/or Intellectual Property Rights contained in Products. The provisions of this Section are a material inducement to the agreement of the Parties and are irrevocable and shall apply to any subsequent amendments, additions, renewals, supplements or modifications to this Agreement.

(f) 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.

(g) 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.

(h) 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.

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

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

(k) 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 AND THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. THE PARTIES FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

(l) 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.

(m) 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. Neither Party has any authority to act as agent for, or to incur any obligations on behalf of or in the name of, the other Party or its Affiliates. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein.

(n) Export. MSP Reseller shall comply with the U.S. Foreign Corrupt Practices Act and all applicable laws, restrictions, and regulations including but not limited to the export control laws of the United States or foreign agency or authority. MSP Reseller shall not export or re-export or authorize the export or re-export of the Trend Micro Products, any product, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations and without the appropriate U.S. and foreign government licenses, and MSP Reseller shall defend, indemnify and hold Trend Micro and its suppliers harmless from any claims arising out of MSP Reseller's violation of such export control laws. By accepting this Agreement, MSP Reseller confirms that MSP Reseller is not a resident or citizen of any country

currently embargoed by the U.S. unless MSP Reseller has obtained the appropriate U.S. and foreign government export licenses. A list of embargoed countries is available at the official web site of the Office of Foreign Assets Control of the U.S. Department of the Treasury at: <http://www.treas.gov/ofac/>.

(o) Entire Agreement. Order of Precedence; Other Purchases. This Agreement is not an offer by Trend Micro and will not be effective until executed by both Parties. The parties have read this Agreement and the Exhibits attached hereto and agree to be bound by its terms. This Agreement when executed, together with any schedules, exhibits, statements of work, attachments, and any subsequent amendments or addenda hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and merges any and all prior and contemporaneous proposals (including letters of intent, quotations, memoranda of understanding, or term sheets), understandings, agreements (including non-disclosure agreements), courses of dealing, representations or statements of any kind (electronic, oral or written) that arise from or are related to the subject matter hereof in any way. The Parties also understand, acknowledge and agree that unless an intent to modify this is expressly stated in a written amendment hereto signed by an officer or other authorized person of each Party, no additional or different terms, conditions, or obligations to these terms and conditions, regardless of whether such additional or different terms, conditions, or obligations to these terms and conditions contain provisions contrary to those in this Agreement, shall be valid or binding on the Parties. Additionally, with respect to Products, Maintenance, and Premium Support Services, the Parties specifically agree that any language, term, condition, or provision contained in or on: (1) Trend Micro's website or any product schedule or Trend Micro's advertisement or promotional material; (2) any order submitted by SP, including any preprinted terms and conditions therein set forth; or (3) any "EULA," "shrink-wrap," "click-wrap," "web-wrap," or similar document (all of the foregoing items (1) through (3) are collectively "**Additional Terms**"), shall in all instances be of no force and effect as to the Parties. All Additional Terms shall be deemed in all instances and circumstances rejected by the Parties in their entirety and shall not in any way supersede, supplement, modify or amend this Agreement. No course of dealing between the Parties, no usage of trade and no parole or extrinsic evidence of any nature shall be used to supplement or modify any of the terms or conditions of this Agreement or shall be construed as creating a new contract. In the event of a conflict between the terms of this Agreement and any schedule, any exhibit, the following descending order of precedence shall apply: (a) any amendment and addenda to this Agreement; (b) this Agreement; and lastly (c) a schedule or exhibit hereto. MSP Reseller acknowledges and agrees that not all products, software, or services now or hereafter offered by Trend Micro may be provided pursuant to the terms and conditions of this or a similar agreement and certain products, software, and services are offered only on different terms and conditions appropriate for and applicable thereto.

(p) 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.

(q) Authority. Each of the Parties hereto represents to the other that: (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement; (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions; (c) it has duly and validly executed and delivered this Agreement; and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

(r) Execution; Counterparts. This Agreement (including its exhibits, schedules, statements of work, and attachments) may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same Agreement. An originally executed complete version of this Agreement (including any exhibits) that is scanned as an image file (*e.g.*, PDF, TIF, etc.) and then delivered by one Party to the other Party via electronic mail (*i.e.*, email) as evidence of agreement and signature, shall for all purposes hereof, be deemed an original signature and agreement. In addition, an originally executed complete version of this Agreement that is delivered via facsimile by one Party to the other Party as evidence of signature and agreement shall, for all purposes hereof, be deemed an original. When any of the above methods of execution of this Agreement is utilized in accordance with the terms set forth in this Section then neither Party shall have the right to object to the manner in which this Agreement was executed as a defense to the enforcement of this Agreement. Each Party agrees that it is fully responsible for ensuring that the person signing on behalf of that Party's behalf has the requisite legal authority to do so.

(s) Read and Understood. Each party acknowledges that it has read and understands this Agreement and agrees,

to be bound by its terms.

(t) **Authority.** Each of the Parties hereto represents to the other that: (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement; (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions; (c) it has duly and validly executed and delivered this Agreement; and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

(u) **Litigation Costs.** If suit is brought by either Party to enforce any rights or obligations arising out of or relating to this Agreement, the prevailing Party shall be entitled to and awarded its reasonable attorneys' fees, court costs, expert witness fees and other expenses of litigation (collectively "**Litigation Costs**"); *provided, however*, if the overall value of the award in the final decision rendered by the court did not exceed the overall value of the last settlement offer made by the non-prevailing Party, then and in such event, the Parties agree that the prevailing Party shall not be entitled to or awarded any Litigation Costs and the non-prevailing Party shall be entitled to and awarded its Litigation Costs, it being further agreed that all of the foregoing shall be determined by the court as part of the resolution of the matter.

(v) **Certification Program.** Trend is presently formulating a new certification program wherein Trend intends to develop and publish certain system specifications, criteria, and protocols relating to the integration into and operation of certain Trend products in a customer's environment. It is intended that a participating customer will be required to meet initial testing as well as periodic retesting to secure and maintain certification of that customer's environment. Upon certification, Trend will authorize that customer to utilize and display Trend's seal of certification. MSP agrees that it will participate in and become certified under the forthcoming certification program unless it notifies Trend to the contrary within a reasonable time (not to exceed thirty (30) days) after the publication and commencement of the certification program.

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	1/1/2012	1/1/2012	1/31/2012	OSCE	500				USA	\$1.00	\$500.00
Company B	1/1/2012	1/1/2012	1/31/2012	IMSS	250				USA	\$1.00	\$250.00
Company C	1/1/2012	1/1/2012	1/31/2012	IWSS	250				USA	\$1.00	\$250.00
Company D	1/1/2012	1/1/2012	1/31/2012	SMEX	500				USA	\$1.00	\$500.00
Total Users:					1,500						\$1,500.00

[PDF to Word](#)