



**TREND MICRO INCORPORATED**  
**Service Provider Program Agreement ("SP Program")**

**SP Reseller**

Company Name: \_\_\_\_\_  
 Contact Person/Title: \_\_\_\_\_  
 Company Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

**Trend Micro Incorporated**  
 ("Trend Micro")  
**225 E. John Carpenter Frwy**  
**Suite 1500**  
**Irving, TX 75062**

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**SP Distributor - Identify your SP Distributor**

Distributor Name: **Ingram Micro**  
 Distributor Address: **1759 Wehrle Drive**  
 City, State, Zip: **Williamsville, NY 14221**  
 Telephone: **800-456-8000 ext 67157**  
 Facsimile: **N/A**  
 Contact person: **Kyle Fenske, [kyle.fenske@ingrammicro.com](mailto:kyle.fenske@ingrammicro.com)**

List Trend Micro Product below	Estimated # of Users in 1 <sup>st</sup> month	Estimated # of Users in 6 months	Estimated # of Users in 12 months
1.			
2.			
3.			
4.			
5.			
<i>Example: WorryFree Security</i>	<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

**SP 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 THE FIRST YEAR PRIOR TO EXECUTION OF THIS AGREEMENT IN THE FORMAT SET FORTH ABOVE.**

This First Page and the attached Trend Micro Managed Service Provider Agreement makes up a binding legal agreement ("Agreement") between SP 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.

SP RESELLER

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

TREND MICRO INCORPORATED

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

(This is the "Effective Date")

## 1. DEFINITIONS

In addition to initially capitalized definitions that may be set forth elsewhere in this Agreement or in an Exhibit or Schedule hereto, the initially capitalized definitions, descriptions set forth in Schedule 1 hereto shall have the meanings specified or referred to in such Schedule (each is an "Agreed Definition") and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms

## 2. SP RESELLER OBLIGATIONS

(a) **General Obligations.** SP Reseller agrees to and shall abide by the following material obligations and SP 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;
- (vi) Unless otherwise agreed by the Parties, the Party that incurs a publicity-related expense will bear that expense and will not seek reimbursement from the other Party. Either of the Parties may at any time make announcements which are required by Applicable Law, regulatory bodies, or stock exchange or stock association rules, so long as the Party so required to make the announcement, promptly upon learning of such requirement, notifies the other Party of such requirement and discusses with the other Party in good faith the exact wording of any such announcement, but for the avoidance of doubt, it shall be the sole right of the Party having the obligation to make such announcement to determine the content and timing of thereof. Notwithstanding the foregoing, each Party is permitted to list the name and logo of the other Party as a customer or provider, as the case may be, all usage and publicity must comply with the Trend Micro Trademark Usage policy.
- (vii) As a material term and obligation of SP Reseller under this Agreement, SP Reseller agrees and shall utilize the Trend Micro License Management Portal (LMP) for all Trend Micro Products that are provisioned for license distribution through the LMP. Trend Micro in its sole discretion shall have the right from time to time to determine, change, or amend the Trend Micro Products that are provisioned through the LMP. SP Reseller shall connect and access all Licenses thereafter solely and exclusively through the LMP. SP Reseller shall abide by and comply with all rules and regulations in connection with SP Reseller's access and use of the LMP. SP Reseller agrees and shall utilize the Trend Micro LMP system for all usage reports when applicable.

## 3. ADDITIONAL RIGHTS AND OBLIGATIONS

- (a) **Delivery.** Upon receipt of this Agreement signed by SP Reseller and a purchase order from SP Distributor, Trend Micro shall deliver to SP Reseller a current version of the Product for use by SP Reseller pursuant to its licenses granted herein and will work with Provider to activate the Service.
- (b) **Reproduction.** SP Reseller shall be responsible for reproducing the Product and applicable documentation and installing the Product onto its servers/computer systems or end customer's servers/computer systems, for the Product or Services and working with the SP Distributor or Trend Micro to activate the Service. SP shall also be responsible for entering into a written SP End Customer Agreement with each SP End Customer prior to providing the Products or Services to such SP End Customer. Certain Products are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or the performance and security of Computers and/or networks. While Trend uses commercially reasonable efforts to properly identify applications and files for detection,

given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, Trend cannot and does not warrant or guarantee that Products will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that SP Reseller does not use or want

(c) **Product Registration.** In order to register or activate Products or respond to a request by SP Reseller for Maintenance, SP Reseller is required to provide Trend with certain information and data described in this Section. In order to facilitate provisioning, delivery, installation, support of and/or access to Products, Updates and technical support, each Product must be registered/activated with Trend, which action enables Trend to contact SP Reseller and to ensure that only validly licensed Product is installed or receives Maintenance and other technical support. Registration requires, among other things, an entity name and address, administrative/technical contact name and information, a valid Product serial number, an email address, and other information requested by Trend from time-to-time. Product registration information will be treated as the Confidential Information of SP Reseller.

(d) **Updates: Support/Maintenance.** SP Reseller shall provide SP End Customers with Level One Support and Trend Micro shall make available to SP Reseller Virus Pattern Updates and Product Updates. SP Reseller shall diligently and promptly download and install all Product Updates and Virus Pattern Updates made available to SP Reseller. In the event SP 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 more than six (6) months from the date that new version Product(s) is made available. Trend Micro shall not be liable for any consequences of SP Resellers' failure to install the Updates. 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 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 SP Reseller, SP Reseller acknowledges that it must routinely download other Updates from Trend Micro's website for the effective operation of the Software and some Updates may require the deployment of new scan engines. In order to allow Trend Micro to provide Maintenance in accordance with this Agreement, as a condition precedent thereto, SP Reseller agrees without compensation to, without limitation to designate and make available to Trend Micro as reasonably necessary, an appropriately qualified technical lead individual employed by SP Reseller and to cooperate fully and in a timely manner with Trend Micro as reasonably requested by Trend Micro in all matters. SP Reseller agrees that Trend may collect and use the information/data that has been identified by Products or Maintenance as malicious, fraudulent, or unwanted content.

## 4. COMPENSATION AND REPORTS

- (a) **Fees.** All payment terms, including monthly pricing, for the license(s) granted or services provided hereunder shall be negotiated and agreed upon solely by and between SP Reseller and the SP Distributor. SP Reseller acknowledges that it must present its order(s) to SP Distributor, SP Distributor will invoice SP Reseller for the prices and terms agreed upon between SP Distributor and SP Reseller. SP 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). Under no circumstances will Trend Micro be responsible for any SP'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, SP Reseller may at any time order from the SP Distributor an increase to the number of Users or Virtual Machines for one or more of the Products licensed hereunder as applicable. No terms and conditions of SP Reseller's purchase order to the SP Distributor or any other documents will be binding on Trend Micro. The terms and conditions of this Agreement shall exclusively govern such increase in the number of Users or Virtual Machines.
- (c) **Purchase Orders and Usage Reports.** As a material obligation SP Reseller shall within five (5) business days after the end of each calendar month provide to SP Distributor without notice an accurate Usage Report

which shall include (1) End Client;(2)Sign-up Date;(3)Usage Begin Date;(4)Usage End Date;(5)Product;(6)Users;(7)City;(8)State;(9)Zip; (10)Country; (11)Price Per User; (12)Subtotal; and(13) Total owed. In addition, in a timely manner provide corresponding monthly purchase order and/or Usage Reports to represent prior month usage of Trend Micro software or services. In the event SP fails to provide the monthly Usage Report when due, Distributor shall have the right to invoice SP in the highest amount estimated by Distributor or Trend Micro in their sole discretion for SP's monthly usage. Trend Micro agrees that such information shall be considered Confidential Information as defined herein. SP Reseller agrees and shall utilize the Trend Micro LMP system for all usage reports when applicable. Failure to timely tender the monthly Usage Report shall constitute grounds for termination of this Agreement. Sample Report will be provided upon request.

**(d) Payments and Invoices.** Upon receipt of each Usage Report and/or Purchase Order from SP Reseller, or if SP fails to provide a timely Usage Report, the estimated amount as determined by Distributor or Trend Micro, SP Distributor shall invoice SP Reseller for the monthly Fees due to SP Distributor. All pricing and payment terms are established exclusively between SP reseller and SP distributor. As a material obligation of this Agreement, SP Reseller shall abide by and fulfill the terms as agreed upon between the SP Distributor and Reseller.

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

**(f) Audit of Records.** SP 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. SP 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 SP 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 SP Reseller shall bear the expenses of such audit.

## 5. LICENSE AND RELATED OBLIGATIONS

**(a) SP Reseller License.** Subject to the terms and conditions of this Agreement and payment of the applicable fees, Trend Micro grants to SP Reseller and SP 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 SP Reseller server/computer system(s) or servers/computer systems controlled by SP Reseller for access and use by no more than the Users for which the SP 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 SP 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 SP Reseller server/computer system(s) to SP End Customers and (iv) utilize best commercial efforts to market the Product(s) and/or Service(s).

**(b) Limitations.** SP Reseller shall only offer Trend Micro Products and Services in the United States and Canada. SP 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 SP Reseller. Title and full ownership rights to the Trend Micro Products, will remain the exclusive property of Trend Micro or its suppliers. SP 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. SP 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 SP 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. SP 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 or Unauthorized Access.** SP 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. SP 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. With respect to Cloud Services, SP Reseller shall not: (a) interfere with or disrupt the integrity or performance of Cloud Services or the Technology; (b) attempt to gain unauthorized access to any Cloud Service or its Technology; (c) access any Cloud Service for purposes of monitoring its availability, performance or functionality, or for any benchmarking or any other competitive purpose; or (d) reverse engineer or access the Cloud Service in order to copy any ideas, features, functions or graphics of the Cloud Service. Trend Micro reserves the right to take reasonable steps to prevent unauthorized access to, and use of, the Products or Services. This Agreement is personal to SP Reseller and SP 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) 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 if designated by Trend Micro. With respect to any Customer-Installed Software which is licensed hereunder and designated for a Perpetual Period, SP 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 SP 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 SP Reseller must purchase Renewal Maintenance as set forth herein.

**(e) Feedback.** SP 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 Technical Account Management Services (collectively "Feedback"). SP Reseller agrees that all Feedback provided by SP Reseller is and shall be given entirely voluntarily and on a non-confidential basis. 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. SP 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.

**(f) Protected Information and Data.** Trend represents to SP Reseller that each Product licensed hereunder when used in accordance with and as permitted by its Documentation, does NOT utilize, process, or require personally identifiable information or protected data to perform its functionality; or transmit, maintain, or store personally identifiable information; or otherwise require any personally identifiable medical or financial protected information. SP Reseller agrees that they will not in any event or circumstance intentionally send or make available to Trend any personally identifiable information or protected data. All of such information and data (including Protected Data included therein) collected,

uploaded, and forwarded by such features deployed by SP Reseller will be treated by Trend in accordance with Trend's Privacy Policy which can be found at <http://www.trendmicro.com/us/about-us/legal-policies/privacy-statement/index.html>, as may be modified from time to time as stated therein. With respect to any Protected Data originating in the European Union, the Parties agreed to be bound by the standard contractual clauses for the transfer of protected/personal data to processors established in third countries, issued by the European Union in a decision dated February 5, 2010, a copy of which can be found at the following website [http://www.cnil.fr/fileadmin/documents/Vos\\_responsabilites/Transferts/CC T-2010-Ss\\_Traitants\\_VE.pdf](http://www.cnil.fr/fileadmin/documents/Vos_responsabilites/Transferts/CC T-2010-Ss_Traitants_VE.pdf), or from Trend if requested by SP Reseller.

(g) **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.

**6. 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 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.

**7. 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 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.

**8. Right to Use Trademarks.** During the term of this Agreement, and subject to SP Reseller's compliance with this Agreement and Trend's then-current Trademark and Style Usage Guidelines in effect from time to time, Trend hereby grants to SP Reseller a non-exclusive, royalty-free, non-transferable, terminable, personal license to use the Trend corporate logo and trademarks solely in connection with the promotional materials, advertising and marketing of any Trend Micro Product or as Trend may authorize from time to time in writing. Trend Micro shall retain all right, title, and interest in the Product or Service and Documentation and associated therein. Trend reserves the right in its sole discretion to terminate or modify this grant for use of the Trend Marks at any time. SP Reseller shall immediately cease all use of the Trend Marks authorized under this Agreement upon expiration or termination of this Agreement.

## 9. INDEMNIFICATION

SP 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 SP Reseller relating to its activities in connection with this Agreement;
- (ii) SP services marketed by SP Reseller under SP Reseller's brand name; or
- (iii) SP Reseller's material misrepresentations relating to Trend Micro, the Products or Services. SP Reseller shall be solely responsible for any claims, warranties, or representations made by SP Reseller or SP Reseller's employees.

## 10. TREND MICRO WARRANTY

(a) **Limited Performance Warranty, (i) For the Products.** Trend

Micro warrants to SP 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 SP 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 SP Reseller's sole and exclusive remedy, at no charge to SP Reseller, Trend Micro will use its commercially reasonable efforts (a) to promptly correct such nonconformity(s) and deliver the correction(s) to SP 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 SP 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. SP 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, SP 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) **DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10(a), THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR TERMS AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SP 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, EXPRESS, IMPLIED OR STATUTORY, REGARDING THIS AGREEMENT OR ITS PERFORMANCE OR NON-PERFORMANCE HEREUNDER, THE PRODUCTS, AND MAINTENANCE 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, USAGE OF TRADE, OR PERFORMANCE, THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR ANY WARRANTY AGAINST INTERFERENCE WITH SP 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 SP 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 SP 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. SP RESELLER FURTHER ACKNOWLEDGES THAT 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.**

## 11. LIMITATION OF LIABILITY

(a) **SUBJECT TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR BREACHES OF CONFIDENTIALITY AND EXCEPT FOR ANY UNAUTHORIZED USE OR DISTRIBUTION BY SP RESELLER AND/OR SP CUSTOMER OF THE TREND MICRO PRODUCTS, IN NO EVENT SHALL TREND MICRO BE LIABLE TO SP 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 SP RESELLER ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES HEREUNDER EXCEED THE AMOUNT SP RESELLER PAID FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM UNDER THIS AGREEMENT. EXCLUDING CLAIMS RELATED TO TAXES, AND TO THE EXTENT PERMITTED BY LAW, NO PARTY SHALL BRING ANY CLAIM BASED ON SOFTWARE OR SERVICE PROVIDED UNDER AN AGREEMENT MORE THAN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES.**

## 12. 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.

(d) **Automatic Termination.** This Agreement terminates automatically, with no further action, if:

- (i) SP 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 SP Reseller unless

SP Reseller immediately gives Trend Micro adequate assurance of the future performance of this Agreement; or

(ii) Bankruptcy proceedings are commenced with respect to the SP Reseller, and if this Agreement has not otherwise terminated, then Trend Micro may suspend all further performance of this Agreement until SP 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 SP 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) SP Reseller breaches any material obligation related to Trend Micro's proprietary rights; or

(v) SP Reseller fails to pay SP 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 SP 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 SP Reseller shall cease from further reproduction or use of the Products or Service for itself or on behalf of its SP 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, SP 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 SP Reseller's breach, (1) SP 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 SP 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, SP 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.

**(f) Limitation of Liability upon Termination. TREND MICRO WILL NOT INCUR ANY LIABILITY FOR EXERCISING ANY OF ITS RIGHTS TO TERMINATE THIS AGREEMENT OR ANY EXHIBIT IN ACCORDANCE WITH THEIR TERMS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SP RESELLER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE ANY COMPENSATION OR REPARATION ON TERMINATION OR EXPIRATION OF ANY AGREEMENT OTHER THAN EXPRESSLY AS PROVIDED THEREIN. THE PARTIES ACKNOWLEDGE THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR TREND MICRO TO ENTER INTO THIS AGREEMENT AND THAT TREND MICRO WOULD NOT HAVE ENTERED INTO THIS AGREEMENT OR ANY AGREEMENT BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.**

**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.

### 13. GENERAL

**(a) Assignment.** SP 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 SP Reseller in derogation of the foregoing shall be null and void and the SP 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 Texas 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 Texas 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 Texas, Dallas 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 District Court of Dallas County, Texas, 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. 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) Headings.** The heading in this Agreement are for convenience only and shall not effect its interpretation.

**(j) 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.

**(k) 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.

**(l) 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.

**(m) Export.** SP 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. SP 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 SP Reseller shall defend, indemnify and hold Trend Micro and



its suppliers harmless from any claims arising out of SP Reseller's violation of such export control laws. By accepting this Agreement, SP Reseller confirms that SP Reseller is not a resident or citizen of any country currently embargoed by the U.S. unless SP 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/>.

**(n) Entire Agreement.** 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.

**(o) 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.

## End of Terms and Conditions

### Schedule 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 SP Reseller, Cloud Services are comprised of web-based services hosted by Trend Micro which are made available to and accessed by SP Reseller at a designated website or IP address login or by such other means as may be designated, enabled, or provided by Trend Micro.

**"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 SP Reseller shall provide (i) information, by telephone, facsimile and email to SP End Customers regarding the installation and operation of the Product, and (ii) Virus Pattern Updates to SP End Customers promptly after Trend Micro makes such Virus Pattern Updates available to SP Reseller. Level One Support also requires that SP 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.

**"Licensing Management Platform (LMP)"** shall mean the Trend Micro platform that enables partners to manage and issue licenses for Trend Micro products with ease without individual participation from Trend Micro. The LMP is also a self-reporting mechanism that enables the partner to provide accurate license count for sales of Trend Micro Products each month without utilizing additional reporting software.

**"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 SP 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 SP End Customer, employee or independent consultant who uses, or has access to, a Computer (including a shared Computer) to perform work for SP 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.

**"SP Distributor" or "Distributor"** means an SP authorized Trend Micro distributor located in United States and/or Canada.

**"SP End Customer"** means a person or entity that ultimately purchases a Product or Service from SP 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.

**"SP End Customer Agreement"** means an agreement that must be executed between SP Reseller and the SP 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.

**"Service Provider" ("SP")** means an entity that has completed a Trend Micro SP program application and has been accepted by Trend Micro into the SP Program.

**"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.

**"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 Software only if such Perpetual Period is offered by Trend Micro therefor and designated in any purchase order as being "Perpetual" and accepted by Trend Micro. For the avoidance of doubt, Cloud Services and Cloud Services portions of Software 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.

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

**"Services"** 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 SP Reseller. It 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 Software.

**"Software"** means the Object Code version of a Trend Micro commercially-available software program, routine, or algorithm which is licensed to SP Reseller pursuant to this Agreement by Trend Micro for installation on Computers owned or controlled by SP End Customer. Software also includes all Documentation and Updates made available to SP End Customer with respect thereto in accordance herewith. In no event or

circumstance will the term "Software" mean a Source Code version of any Trend Micro software or otherwise include any Source Code in connection therewith. "Source Code" means the human-readable version of a software program.

"Subscription Services" means any Trend Micro 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 SP 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.

"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 SP End Customer has the right to use the Product; *provided, however*, the Subscription Period may never exceed the expiration of the Term.

"Updates" means and includes new Object Code versions of electronic files, code, routines, processes, pattern files and definitions, that may be used by 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, 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.

"Usage Report" means the report provided by SP Reseller to SP Distributor each month that provides the total number of Users, as applicable, to which SP 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 SP End Customer, company or individual's name (iii) the number of Users serviced for such SP End Customer, (iv) the date service began for such Users, (v) the city/state/zip code and country where the SP 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. Failure to timely tender the monthly Usage Report shall constitute grounds for termination of this Agreement.

"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 SP End Customer or used by its employees or agents in the scope of their employment for SP End Customer and (ii) receives the Product or Services, subject to a SP End Customer Agreement for which Fees have been paid.

"Virtual Machines" are 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 Software is installed.

#### Appendix I

##### Required Terms in SP 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 SP End Customer acknowledges that it has no right or license to access or use the Product or Service and that only SP Reseller may access or use the Product or Service on behalf of SP End Customer in accordance with terms and conditions set forth in the agreement between SP Reseller and Trend Micro.
2. The agreement must state that SP 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 SP 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 SP 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 SP End Customer agrees that Trend Micro shall be a third party beneficiary of the Agreement between SP Reseller and SP End Customer.

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