

## NOTICE

As of October 18, 2019, Trend Micro Incorporated acquired ownership of Cloud Conformity, Inc. and became the licensor of Cloud Conformity products in accordance with these Terms of Service.



### TERMS OF SERVICE FOR TREND MICRO CLOUD SERVICES THAT ARE HOSTED BY OR ON BEHALF OF TREND MICRO (these "Terms of Service")

**IMPORTANT: READ CAREFULLY. THE RIGHT TO ACCESS AND USE EACH OF TREND MICRO'S CLOUD SERVICES BY BUSINESS, GOVERNMENTAL, AND OTHER LEGAL ENTITIES ARE SUBJECT TO AND CONDITIONED ON ACCEPTANCE OF AND AGREEMENT TO THESE TERMS OF SERVICE. CLOUD SERVICES ARE NOT AVAILABLE FOR PERSONAL USE, HOME USE, AND/OR CONSUMER USE. IF COMPANY AND TREND MICRO HAVE ENTERED INTO A MANUAL/ELECTRONIC SIGNATURE-BEARING CORPORATE LICENSE AGREEMENT (OR OTHER SIMILAR DOCUMENT) WITH RESPECT TO THE ACCESS TO AND/OR USE OF ANY TREND MICRO CLOUD SERVICE, THEN SUCH AGREEMENT WILL GOVERN AND CONTROL THE ACCESS TO AND/OR USE OF SUCH CLOUD SERVICE AND THESE TERMS OF SERVICE WILL HAVE NO EFFECT WITH RESPECT THERETO. OTHERWISE, THESE TERMS OF SERVICE SHALL GOVERN AND CONTROL COMPANY'S ACCESS TO AND/OR USE OF ANY CLOUD SERVICE ACQUIRED HEREUNDER. Any additional, conflicting, or different terms or conditions proposed by Company in any Company-issued document (such as an Order), are hereby rejected by Trend Micro and excluded herefrom.**

**Trial and Paid Use:** Cloud Services are made available by Trend Micro from time-to-time through its Resellers or directly from Trend Micro, but Cloud Services are not available or sold for personal use, home use, and/or consumer use by any person.

**Product Exclusions:** **These Terms of Service do NOT apply to: (a) any standalone application software whether or not acquired from a Reseller, direct from Trend Micro, or an Online Store Provider (as defined in Section 1.2 below) store; (b) any integrated application software that is embedded in or preloaded on a hardware-based appliance; or (c) any annual maintenance for such software licensed by Trend Micro, it being understood that the terms and conditions governing those different Trend Micro products are set forth in the Global Business Software and Appliance Agreement at [trendmicro.com/eula](http://trendmicro.com/eula).**

**Effective Date:** 1 July 2019

**COMPANY IS ORDERING OR HAS ORDERED A CLOUD SERVICE THROUGH COMPANY'S RESELLER OR DIRECTLY FROM TREND MICRO FOR ACCESS AND USE IN CONNECTION WITH COMPANY'S INTERNAL BUSINESS USE. BY COMPANY: (1) ORDERING A CLOUD SERVICE; (2) CAUSING TREND MICRO TO PROVISION A CLOUD SERVICE; AND/OR (3) ACCESSING OR USING A CLOUD SERVICE, COMPANY AGREES THAT ANY SUCH ACTION CONSTITUTES:**

- a. COMPANY'S ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THESE TERMS OF SERVICE;
- b. COMPANY'S ACCEPTANCE AND AGREEMENT TO THESE TERMS OF SERVICE FOR SUCH CLOUD SERVICE;
- c. COMPANY'S ONGOING REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY MEETS (AND AT ALL TIMES WILL COMPLY WITH) ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH IN THESE TERMS OF SERVICE; AND
- d. COMPANY'S REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY'S REPRESENTATIVE ACTING ON ITS BEHALF IS AUTHORIZED TO AND DOES POSSESS THE AUTHORITY TO ACCEPT, AGREE, AND BIND COMPANY TO THESE TERMS OF SERVICE.

**COMPANY AGREES THAT WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THESE TERMS OF SERVICE AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY.**

**IF COMPANY DOES NOT ACCEPT AND AGREE TO THESE TERMS OF SERVICE, COMPANY MAY NOT ORDER, REGISTER, DEPLOY, ACCESS, OR USE A CLOUD SERVICE AND COMPANY WILL IMMEDIATELY NOTIFY TREND MICRO AT [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com) THAT COMPANY DOES NOT AGREE TO THESE TERMS OF SERVICE AND WILL NOT BE ACCESSING OR USING SUCH CLOUD SERVICE. AGREED DEFINITIONS USED IN THESE TERMS OF SERVICE ARE IN SECTION 1.2 BELOW.**

#### **1. Overview; Agreed Definitions.**

**1.1.1 Application of These Terms of Service.** Subject always to termination in accordance herewith, these Terms of Service that have been accepted and agreed by Company are applicable only to the Cloud Service for such time that the Cloud Service is subject to an outstanding Order that Company has issued directly or indirectly to, and has been accepted by, Trend Micro.

**1.1.2 Entire Agreement.** The Company and Trend Micro agree that these Terms of Service (including the Standard Contractual Clauses and Data Processing Addendum that form a part hereof and set forth certain of the responsibilities of the Parties with respect to GDPR Data) are the final, complete, and exclusive statement of the agreement between the Parties with respect to access to and use of the Cloud Service secured by Company under an Order, and any prior agreements, representations, statements, white papers, or advertisement of Trend Micro (whether oral, written, or website) or otherwise arising from any course of dealing between the Parties or usage of the trade or descriptions that are not specifically set forth in these Terms of Service with respect to the subject matter hereof, are all merged into and superseded by these Terms of

Service. Trend Micro will not be bound by, and specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of these Terms of Service (whether or not it would materially alter these Terms of Service) and which is submitted by Company in any Order, confirmation, correspondence or other document. **In entering into these Terms of Service, each Party represents and warrants to the other Party that it is NOT relying on any extrinsic representation, warranty, guaranty, condition, covenant, promise, forbearance, or inducement of any kind or nature that is or was made by any person that is not specifically set forth in these Terms of Service.**

**1.1.3 Procurement Under these Terms of Service.** Company may secure Cloud Services under these Terms of Service by one of two methods:

a. **Procurement Through a Reseller.** Typically, Company will secure a Quote for Cloud Services from a Reseller of Trend Micro products or services. Based on such Quote, Orders by Company will be sent to the Reseller at such prices, discounts, and on invoice and payment terms as agreed solely by Company and its Reseller. Company understands that if an Order is placed with a Reseller, the Reseller can place an order with Trend Micro for Cloud Services (either directly through Trend Micro or through a Trend Micro distributor) as requested by Company, but such Order is and will be subject to acceptance or rejection by Trend Micro at its discretion. Based on documents submitted by the Reseller, Trend Micro will reject or accept the Order, which acceptance is signified by Trend Micro's issuance of its Certificate to Company. Except for the matters agreed in the first sentence of this paragraph between the Reseller and Company, all other rights, obligations, terms, conditions, limitations, and exclusions regarding Cloud Services that are purchased by Company are exclusively set forth in these Terms of Service. All payments by Company for Cloud Services Ordered from a Reseller will only be made directly to the Reseller and never to Trend Micro. Company acknowledges that each Reseller is an independent contractor and in no event or circumstance will any Reseller now or hereafter be deemed a joint venturer, partner, fiduciary, or agent of Trend Micro. No Reseller has been, or will ever be, authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, condition, warranty, guaranty, or any otherwise contract for or act on behalf of Trend Micro or waive or renounce any right of Trend Micro or modify any right, obligation, or agreement of Company set forth in these Terms of Service.

b. **Direct Purchase from Trend Micro.** Company may (if permitted by Trend Micro) secure a Quote directly from, and place an Order directly with, Trend Micro based on such Quote, which Order if accepted by Trend Micro will be governed solely by the terms, conditions, limitations, and exclusions set forth in these Terms of Service (including the Certificate). All prices and payment terms will be as set forth in the Quote by Trend Micro and all payments for Cloud Services will be made by Company directly to Trend Micro on such payment terms as set forth in such Quote.

**1.1.4 Not a Master Purchase Agreement.** Company acknowledges that this is NOT a master purchase agreement for subsequent purchases of a Cloud Service, but rather, these Terms of Service only apply to the instant Order of a Cloud Service by Company. Each subsequent Order of Cloud Service placed by Company will be made subject to and conditioned on the agreement of the Parties to the then-current version of these Terms of Service unless otherwise agreed in a writing signed by the Parties.

**1.2 Agreed Definitions.** In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in these Terms of Service (including all policies, procedures, and Trend Micro websites that are specifically referenced and incorporated herein), the initially capitalized definitions, descriptions, clarifications, and agreements shall have the meanings set forth in this Section 1.2 (each is an **"Agreed Definition"**) and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

**"Administrator"** means one or more Company employees with authorization to manage the Cloud Service on behalf of Company. Each Administrator will have the ability to, among other things, develop Company's Configuration from time-to-time, maintain, set rules and policies for, manage Company's access to, view alerts and events generated by, and/or provide technical support for, all or part of Cloud Service as determined by Company from time-to-time.

**"Affiliate"** means as to a Party, each person that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. **"Control"** means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

**"Applicable Laws"** means all mandatory national, federal, provincial, state, municipal, and local laws, statutes, acts, ordinances, regulations, rules, codes, treaties, executive orders, supervisory requirements, official directives, circulars, opinions, interpretive letters, and other official releases in the Territory that are applicable from time-to-time to a Party's performance of its obligations and/or exercise of its rights hereunder, including, but not limited to, data protection/privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions rules and regulations; and export/import laws.

**"Certificate"** means a written (electronic or otherwise) acceptance/entitlement confirmation issued by Trend Micro that confirms the Cloud Services purchased by Company hereunder, including the applicable Service Capacity where applicable. The Certificate and these Terms of Service forms the entire agreement between Trend Micro and Company with respect to each Cloud Service that is purchased hereunder. Company is advised to retain the Certificate as proof of its entitlement to such Cloud Service(s). In some regions covered hereby, the Certificate is sometimes referred to as a License Certificate or an Entitlement Certificate.

**"Cloud Service(s)"** means any Trend Micro-branded combination of hardware, software components, and/or any fixed scope, technical/managed service that form the environment of a cloud security service (including any Enabling Software and any infrastructure/platform forming a part thereof that is hosted by or on behalf of Trend Micro in the provision of such Cloud Service) that is accessed and/or used by Company in accordance with Terms of Service for the Service Capacity (as evidenced on the Certificate) that Company has purchased directly from Trend Micro or indirectly from a Reseller. A then-current list of all Cloud Services offered by Trend Micro to which these Terms of Service apply is set forth at [trendmicro.com/eula](https://trendmicro.com/eula). Each Cloud Service also includes any Service Description related to such Cloud Service, Enabling Software (if any), and/or any fixed scope, technical/managed service, as well as any and all content, work product, error corrections; updates; upgrades; new versions; or other releases forming a part of such Cloud Service arising from Support Services or otherwise; and all content and functionality available from Trend Micro support site(s) that Trend Micro may elect to make available to customers of such Cloud Service. For the avoidance of doubt, these Terms of Service do not grant Company any right to request or receive a binary code copy of any Trend Micro published software except for Enabling Software (if any) that may form a part of a Cloud Service.

“**Cloud Service Feedback**” shall have the meaning set forth in [Section 6.2](#).

“**Company**” refers to an entity that: (a) has agreed to these Terms of Service with respect to Cloud Service; (b) has purchased and then-currently has the right to access and/or use (only in accordance with these Terms of Service) Cloud Service hereunder as evidenced by a Certificate; and (c) to which these Terms of Service have not been terminated or otherwise expired.

“**Company’s Configuration**” shall have the meaning set forth in [Section 4.1.3](#).

“**Company Data**” means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to the Cloud Service environment provided hereunder; and/or (b) otherwise provided or made available to Trend Micro in the course of the Company’s use or access to or receipt of Cloud Services or Support Services.

“**Confidential Information**” shall have the meaning set forth in [Section 6.1](#).

“**Contractor**” is an independent contractor that provides services in support of Company and/or its Affiliates with respect to any Cloud Service provided hereunder pursuant to a written agreement between such Contractor and Company that imposes an obligation (among other obligations) on such Contractor to fully comply with these Terms of Service to the extent of access to and/or use of any Cloud Service by such Contractor.

“**Controlled Technology**” shall have the meaning set forth in [Section 11.4](#).

“**Cyberthreat Data**” means any malware, spyware, virus, worm, Trojan horse, ransomware, or other potentially malicious or harmful code or files that Company does not want, as well as URLs, DNS data, network telemetry, commands, executable binary files, macros, scripts, processes or techniques, metadata, or other information or data associated with the foregoing, that may be related to unauthorized intrusions or attacks by third parties associated therewith and that: (a) Company provides to Trend Micro in connection with these Terms of Service; or (b) is accessed, collected, or discovered by Trend Micro during the course of providing any Cloud Service, excluding any such information or data that identifies Company or to the extent that it includes Personal Data. Cyberthreat Data is not Confidential Information or Company Data hereunder.

“**Data Processing Addendum**” or “**Addendum**” means Trend Micro’s Data Processing Addendum (at [trendmicro.com/dpa](https://trendmicro.com/dpa) or as may be requested by Company from [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com)) that is applicable if and to the extent Trend Micro acts as a ‘processor’ or ‘sub-processor’ (as defined in the GDPR) for Company of GDPR Data. The Parties agree that the Data Processing Addendum and the Standard Contractual Clauses that form a part thereof are incorporated herein and made a part hereof for all purposes on the terms and subject to the conditions and limitations set forth herein and therein.

“**Different Terms**” shall have the meaning set forth in [Section 2.2](#).

“**Enabling Software**” means binary code software agent, client, or tool that may be published by Trend Micro from time-to-time and licensed (but never sold) hereunder that is installed on Company’s device(s) that enables and facilitates optimal access to and use of a Cloud Service (such as a management console or user interface), and that does not perform functionality without the active right to access and use Cloud Service. Enabling Software may or may not be identified in the Service Description.

“**End User**” means any individual, entity, or person (directly or indirectly through another user) that: (a) accesses or uses a Cloud Service for Company’s (or an Affiliate’s) benefit in accordance with these Terms of Service such as Company’s Administrator(s), technical/support resources, or employees/contractors whose access/use is in furtherance of Company’s or an Affiliate’s Internal Business Use; or (b) otherwise accesses or uses Cloud Service.

“**Evaluation Service**” shall have the meaning set forth in [Section 2.3](#).

“**Excluded Damages**” means any and all claims, causes of action, losses, expenses, or damages of Company and/or its Affiliates arising from or related to any: loss of use of any networks, systems, software, hardware, computers, or devices; unauthorized access to, alteration of, or the deletion, destruction, corruption, damage, loss, of any information/data and/or the restoration thereof; lost or anticipated business revenue or profits; loss of business opportunity or failure to realize expected savings; third party claim against Company and/or any of its Affiliates; reduction in reputation, or goodwill; loss of use or other downtime of all or a portion of a Cloud Service (or supporting hosting platform) for any reason, including as a result of power outages, system failures, internet failures, or other denial of access to or interruption of such Cloud Service; procurement of substitute goods, software or services; or otherwise for any other incidental, punitive, exemplary, indirect, special, or consequential damages.

“**Excused Performance Events**” means any event, condition, and/or circumstance beyond Trend Micro’s reasonable control that was unavoidable even if foreseeable, including, without limitation: acts of God; declared or undeclared war; terrorism; sabotage; criminal actions; armed conflict; actions of civil authorities or governments; earthquakes; fires; floods; cyber-attacks; network intrusions; “zero day” threats or attacks; private or state-actor hacking, denial-of-service attacks, or other malicious actions; telecom/internet congestion, slowdown or outage; computer, networks, or systems failures or delays involving hardware, software, or services not within Trend Micro’s possession, control and responsibility; or labor strike, embargo, or boycott.

“**GDPR**” means the European Union General Data Protection Regulation that is only applicable to Personal Data that is subject to, regulated by, and protected under the GDPR and shall also include additional laws, rules, and regulations now or hereafter promulgated by the European Union, any Member State, or other governmental authority under or supplemental to the GDPR, as the same may be amended,

supplemented or replaced from time to time; and 'controller,' 'processor,' and 'data subject' shall have the meanings respectively assigned to them in the GDPR.

**"GDPR Data"** shall mean 'personal data' (as defined in Art. 4 of the GDPR) under the GDPR that is made available or supplied by Company to Trend Micro pursuant to these Terms of Service, if and only to the extent that the GDPR applies to Trend Micro with respect to its processing of such Personal Data.

**"Global Privacy Notice"** means Trend Micro's Global Privacy Notice published from time-to-time at [trendmicro.com/privacy](https://trendmicro.com/privacy) or as may be requested by Company from [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com).

**"High-Risk Environment"** means a device, situation, environment, network, or system requiring safety design, features, and/or functionality for fail-safe or fault-tolerant operation or execution in order to maintain safe and secure performance in an environment where a failure could lead (directly or indirectly) to bodily injury, death, physical property damage, and/or environmental damage. High-Risk Environments may include, but are not be limited to: (a) the design, construction, operation, or maintenance of any nuclear facility, civil infrastructure such as power plants and waterworks, manufacturing facilities, and/or industrial plants such as chemical refineries; (b) navigation, communications, or operating systems in aircraft, ships, trains, and other modes of transportation; (c) air traffic control systems; (d) weapons systems (nuclear or otherwise); (e) operation of life-support or life-critical medical equipment or other equipment or systems affecting a patient's health or well-being; or (f) any other device, environment, network, or system in which the unavailability, inaccuracy, circumvention, ineffectiveness, or failure of the Cloud Service could lead or contribute to bodily injury, death, physical property damage, and/or environmental damage.

**"Instance"** means an image of software that is created by executing the software's setup or install procedure or by duplicating such an image.

**"Internal Business Use"** means the internal business access and use of Cloud Services solely by and for the direct benefit of Company specifically in connection with the security, protection, and/or integrity of Company's systems, networks, devices, documents, emails, and/or other Company Data.

**"IP Claim"** means any suit, cause of action, or other legal proceeding filed/brought against Company by a third party in the courts of law, equity, or otherwise ONLY in the Territory, that asserts that Company's use of a Cloud Service (or component parts thereof, but not Open Source Software) provided hereunder directly infringes any patent, copyright, or trademark of such third party, or makes unlawful use of a trade secret of such third party; *provided, however*, the term IP Claim will not include and Trend Micro will have no obligation hereunder unless each and every third party allegation or assertion is specifically made against such Cloud Service alone. In addition, the term IP Claim will not include, and Trend Micro will have no obligation under [Section 10](#) or otherwise with respect to, any suit, claim, cause of action, or other legal proceeding arising out of, based on, or related to the following: (a) any use of Cloud Service by Company that is NOT in accordance with these Terms of Service, its Service Description, or Applicable Laws; (b) Company Data and/or other materials that Company provides or makes available in connection with its use of Cloud Service; (c) any redistribution of Cloud Service, or use of Cloud Service for the benefit of any third party not specifically permitted herein; (d) any use of a version of any Enabling Software that has been superseded and made available to Company, if the IP Claim would have been avoided by using an unaltered current version of such Enabling Software; (e) any Open Source Software; or (f) any third party allegation or assertion made against a Cloud Service (or any output thereof) that involves use of such Cloud Service by Company in combination with any other software, service, business process, or technology not provided by Trend Micro or not specified as being required by the applicable Service Description where the IP Claim would not have arisen or would have been avoided but for such combination.

**"Online Store Provider"** means an entity that hosts an online marketplace or store (each a **"Store"**) that offers for sale: (a) such entity's infrastructure (IaaS) and/or platform (PaaS) hosting services by separate agreement and a separately-stated service fee with the customer (such as Company); together with (b) the software applications of third party publishers (such as Trend Micro) that are offered and resold (for a separately-stated royalty/fee) by such Online Store Provider for deployment on the Store's infrastructure and/or platform, but licensed to the customer by the application software publisher for a limited term and not perpetually. Company acknowledges and agrees that license to deploy, access, and use Trend Micro application software that is procured by Company on an Online Store Provider's store is NOT subject to these Terms of Service, but rather, is governed by the Trend Micro Global Business Software and Appliance Agreement set forth at [trendmicro.com/eula](https://trendmicro.com/eula), or as may otherwise be posted on the Store listing by Trend Micro from time-to-time.

**"Open Source Software"** means: (a) each and every third party software code/component that is licensed/distributed under a license agreement approved by the Open Source Initiative or similar open source or freeware license (and not these Terms of Service); and (b) is included in a Cloud Service or any Enabling Software by Trend Micro; including any of the following Open Source Initiative-approved license agreements: (i) GNU's General Public License (GPL), Lesser/Library GPL (LGPL), and GNU Affero Public License; (ii) The Artistic License (i.e., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Berkeley software design (BSD license including Free BSD or BSD-style license); (vi) the Sun Community Source License (SCSL); (vii) an Open Source Foundation License (e.g., CDE and Motif UNIX user interfaces); (viii) the Apache Server license; or (ix) the MIT License. For the avoidance of doubt, each individual, third party software code/component of Open Source Software has its own copyright and its own license agreement.

**"Optional Features"** means those capabilities, features, and functionality in a Cloud Service that require Trend Micro to process certain Company Data (some of which may be GDPR Data or Personal Data) that Company may elect to opt-in or opt-out of the use thereof only if and to the extent a right to opt-in or opt-out is described in and permitted by its Service Description. For example, such Optional Features if active may permit a Cloud Service to: (a) provide the defined capabilities, features, and functionality thereof as described in the Service Description; and/or (b) provide the most effective, up-to-the-minute threat protection and features to detect or prevent the latest malicious behavior and potentially fraudulent websites, internet security risks, and/or Cyberthreat Data.

**"Order"** means: (a) a purchase order or other ordering document issued by Company in response to a Quote; or (b) a Company-initiated procurement document, in each instance placed by Company (with a Reseller or Trend Micro, as the case may be) for the procurement of Cloud Services to be supplied only in accordance with and subject to the provisions of these Terms of Service. All Orders are Customer's irrevocable

commitment to purchase and pay for the Cloud Services stated in the Order and are subject to direct or indirect acceptance by Trend Micro at its sole discretion, which acceptance occurs and is signified by Trend Micro's issuance of a Certificate to Company for such Cloud Services or other Trend Micro performance signifying its acceptance.

**"Party"** means only each of Company and Trend Micro, and together, they are collectively the only **"Parties."** All other persons are third parties.

**"Personal Data"** means one or more data elements relating to an identified or identifiable natural person that can be used to identify, directly or indirectly, such natural person to the extent such data is regulated, protected, restricted, or controlled under Applicable Laws (such as, for example, the GDPR) for the protection of that natural person's privacy and related rights.

**"Quote(s)"** means one or more documents issued by Trend Micro or its Reseller (as the case may be) to Company specifying the Cloud Service that Company seeks to obtain, the related pricing, payment terms, and offered Service Capacity and sufficient other information to complete the transaction. Each Quote shall incorporate these Terms of Service (specifically, by reference, and/or publication of Trend Micro's website) as the sole basis and governing document for any procurement by Company based on the Quote.

**"Reseller"** means a reseller, Online Store Provider (in limited instances where specifically noted by the Store), system integrator, independent software vendor, VAR, OEM or other channel partner that is authorized by Trend Micro or its distributor to secure orders for the sale of Cloud Services to customers, including Company.

**"Sandboxing"** means a separate, secured code execution environment hosted by Trend Micro that permits it to inspect Cloud Service-selected Company Data for suspected Cyberthreat Data.

**"Service Capacity"** means the applicable Subscription Period together with the number of Virtual Machines, Instances, End Users, throughput volume, email addresses, nodes, other measure, and/or other metering mechanism for each Cloud Service purchased under these Terms of Service that is reflected the Certificate therefor. If a Cloud Service permits Company to exceed the Service Capacity that is purchased by Company, then Company is responsible for promptly purchasing an additional quantity to true-up for any excess usage.

**"Service Description"** means the printed, electronic, and/or online technical documentation and operating instructions and requirements generally made available by Trend Micro for a Cloud Service (and Enabling Software, if any) that is made available to Company for the purpose of supporting Company's Internal Business Use of such Cloud Service. The Service Description is incorporated herein and made a part hereof for all purposes; *provided, however*, Company understands and agrees that the published Service Description may be revised from time-to-time by Trend Micro at its discretion, for among other reasons, changes or improvements to, or new versions of, Cloud Service, without the need to amend these Terms of Service, and in each such event, such revised Service Description will supersede all prior Service Descriptions with respect to subsequent use of such Cloud Service. Trend Micro states that certain Cloud Services may be subject to service level targets, service level objectives, or service level agreements that may be published or otherwise made available by Trend Micro from time-to-time.

**"Smart Protection Network"** or **"SPN"** means Trend Micro's Smart Protection Network.

**"Standard Contractual Clauses"** or **"Clauses"** or sometimes also referred to the "EU Model Clauses" means the Standard Contractual Clauses (processors) published by the European Commission, which Standard Contractual Clauses are attached to the Data Processing Addendum at [trendmicro.com/dpa](https://www.trendmicro.com/dpa) or as may be requested by Company from [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com).

**"Subscription Period"** means the period (such as per host hour, month, or year, but never perpetually) for which Company has purchased the right to access and use a Cloud Service provided hereunder. The Subscription Period is as stated in the Certificate.

**"Support Services"** are described in [Section 5.1](#).

**"Term"** is described in [Section 9.1](#).

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

**"Trend Micro"** means in each instance that Cloud Services are acquired under these Terms of Service, the Licensing Entity that provides Cloud Services in such instance as determined by application of [Section 12](#).

**"Virtual Machine"** means a software container, implementation, or emulation of a computer/server/machine (*i.e.*, a physical device) that runs its own operating system and executes application programs like a physical machine.

## **2. Grant for Cloud Service; License to Enabling Software; Open Source; Security Acknowledgement; Evaluation.**

### **2.1 Grant.**

**2.1.1 Grant of Access to and Use of Cloud Service.** On the terms and subject to Company's continuous compliance with all of the agreements, conditions, exclusions, and restrictions set forth in these Terms of Service (including the Certificate), Trend Micro hereby grants only to Company, a non-exclusive, non-transferable, non-assignable, terminable (in accordance herewith or Applicable Law) limited right in the Territory to access and use Cloud Service in accordance with its Service Description only for Company's Internal Business Use (and the Internal Business Use of any of its Affiliates and/or Contractors as it permits in accordance with [Section 2.11](#)) for such time and only for the Service



Capacity purchased and paid for (in accordance with agreed payment terms) by Company until the expiration or termination of the foregoing grant in accordance herewith. Company may allow access to and use a Cloud Service only for the purposes specifically permitted herein including the Service Description.

**2.1.2 License to Enabling Software.** If a Cloud Service is accompanied by Enabling Software, then by downloading or installing any Enabling Software on any computer, Company agrees not to use such Enabling Software for any purpose other than to facilitate and/or enable Company's access to and use of such Cloud Service. Subject to these Terms of Service, Trend Micro grants Company (solely for the Internal Business Use of Company except as otherwise permitted in Section 2.11) a non-exclusive, non-transferable, worldwide (subject to Applicable Laws), terminable (in accordance herewith) license to install and use any Enabling Software on equipment owned or operated by or on behalf of Company, solely as needed to access and/or use Cloud Service as described in the Service Description; *provided that*, Company: (a) at all times complies with the terms and conditions of these Terms of Service and the Service Description; (b) ensures that anyone (including End Users) who accesses or uses the Enabling Software (accessed either locally or remotely) in connection with Cloud Service (i) does so only on Company's (or an Affiliate's if permitted by Company) behalf and for its sole benefit, and (ii) complies with the terms and conditions of these Terms of Service; (c) does not (i) install, access, use, copy, modify, or distribute the Enabling Software except as may be expressly permitted in Service Description and these Terms of Service, and/or (ii) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Enabling Software; and (d) does not use any of the Enabling Software's components, files, modules, or related licensed materials separately from the Enabling Software. Company acknowledges that the Enabling Software is copyrighted and licensed and not sold to Company under the terms of these Terms of Service and Company acknowledges that it is not hereunder granted any license, right, title, or interest in or to any patent, copyright, trade secret or other intellectual property of Trend Micro or any third party. All rights in and to Enabling Software not expressly granted to Company in this Section 2.1.2 are reserved by Trend Micro and Company will have no other or different rights (implied, by estoppel, or otherwise) or privileges with respect to any Enabling Software. If and to the extent only as maybe permitted in the Service Description, Company may make a single copy of the Enabling Software for back-up, archival, and disaster recovery purposes. The Enabling Software (and every back-up, archive, and disaster recovery copy) must be promptly un-installed and irretrievably destroyed when Company no longer has a right to access or use a Cloud Service provided hereunder.

**2.2 Open Source Software.** Enabling Software may come bundled or otherwise be distributed with Open Source Software, that is subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each "**Different Terms**") under which such Open Source Software is distributed by Trend Micro in such Enabling Code and NOT these Terms of Service. Different Terms, if any, applicable to any Open Source Software redistributed in any Enabling Software provided hereunder will be identified by Trend Micro in the Service Description for, and/or in a "Read Me" or an "About" file in, the Enabling Software. OPEN SOURCE SOFTWARE IS PROVIDED BY TREND MICRO "AS IS, WITH ALL FAULTS, AS AVAILABLE" WITHOUT (AND TREND MICRO SPECIFICALLY DISCLAIMS) ANY GUARANTEE, CONDITION, OR WARRANTY (EXPRESS, IMPLIED, OR OTHERWISE) OF ANY KIND OR NATURE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND/OR NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS OF SERVICE, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH OPEN SOURCE SOFTWARE, TREND MICRO SHALL HAVE NO LIABILITY FOR ANY DIRECT OR EXCLUDED DAMAGES, HOWSOEVER CAUSED AND/OR OTHERWISE BASED ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF OPEN SOURCE SOFTWARE, EVEN IF TREND MICRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**2.3 Evaluation of Cloud Service.** If Company has Ordered and agreed to these Terms of Service or otherwise entitled to an evaluation, trial, proof-of-concept, or test of a Cloud Service (herein "**Evaluation Service**"), then the provisions of this Section shall apply and shall control over any conflicting terms of these Terms of Service. On the terms and subject to the conditions of these Terms of Service when and if accepted and approved by Trend Micro, Company will have the right to conduct a test of the Evaluation Service for a period not to exceed thirty (30) days (unless otherwise agreed to in writing by Trend Micro or earlier terminated in accordance with Sections 9 or 10), during which period Company may access and use the Evaluation Service solely for Company's internal evaluation in a non-production environment (that is to say, an environment that does not access or process any live production Company Data or otherwise perform productive work) to decide whether to purchase the right to continue to access and use the Evaluation Service for its Internal Business Use. Evaluation Services are provided gratuitously by Trend Micro. Trend Micro has no obligation to provide any training or Support Service for the Evaluation Service, but Trend Micro may do so at its sole discretion. Company acknowledges that the Evaluation Service may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions, and/or data loss. CONSEQUENTLY, EVALUATION SERVICES ARE PROVIDED TO COMPANY SOLELY ON "AS AVAILABLE" AND "AS IS, WITH ALL FAULTS" BASIS, AND TREND MICRO DISCLAIMS ALL WARRANTIES, CONDITIONS, GUARANTEES, AND LIABILITY IN CONNECTION WITH ALL EVALUATION SERVICES. COMPANY ASSUMES ALL RISK OF USE OF EVALUATION SERVICES. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE LIABILITY OF TREND MICRO, ITS LICENSORS, AND/OR SUPPLIERS SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS (USD\$100.00) IN THE AGGREGATE FOR ALL CLAIMS AND CAUSES OF ACTION. If Company accesses and/or uses Cloud Service after expiration of Evaluation Services as set forth in this Section 2.3, Company agrees to pay for Cloud Service thereafter in accordance with Trend Micro's rates and fees published by Trend Micro from time-to-time and the Parties agree that these Terms of Service shall apply to such paid use.

**2.4 Security Acknowledgement.** Certain portions of Cloud Services are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or the performance and security of computers, systems, and/or networks. While Trend Micro uses commercially reasonable efforts to properly identify applications and files for detection by its Cloud Services, *however*, given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, Trend Micro cannot and does not represent, warrant, or guarantee that a Cloud Service will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Company does not use or want. Company understands and agrees that the success of its security efforts are dependent on a number of factors solely under Company's control and responsibility such as: (a) use of a number of network, hardware, cloud services, and software security tools in a coordinated effort to manage present and future security threats; (b) implementation of cybersecurity protocols and controls, network, cloud services and systems protections, as well as monitoring and detection processes applicable to the foregoing; (c) enforcement of appropriate internal security policies, procedures, and controls regarding access, security, encryption, use, and transmission of data; (d) the

development and continual testing of processes and procedures (i) for the backup and recovery of any network, system, software, database, and any stored data, as well as, (ii) implementation of security-breach incident response practices; (e) conducting regular cybersecurity and privacy training for employees; (f) having adequate vendor risk management processes; and (g) promptly downloading and installing all updates to all networks, products, and software that are made available to Company by any publisher or manufacturer.

**2.5 Ownership; Reservation of Rights.** Each Cloud Service is and remains the exclusive property of Trend Micro and/or its licensors and service providers. Except for Company's limited access and use rights expressly granted in these Terms of Service and the limited license granted in Section 2.1.2 to Enabling Software, no license, right, title, or interest in or to a Cloud Service or Trend Micro's and its licensor's intellectual property rights therein, are granted to Company. Company acknowledges and agrees that, as between the Parties, each Cloud Service and all ideas, methods, algorithms, formulae, processes, and concepts incorporated into Cloud Service, and all revisions, corrections, modifications, enhancements, derivative works, releases, and upgrades, and anything developed (such as performance of an analysis of and any all Cyberthreat Data provided with Company Data to a Cloud Service) or made available by or on behalf of Trend Micro under these Terms of Service and/or a Cloud Service, and any copies of the foregoing are: (a) the intellectual property of Trend Micro, its Affiliates, and/or its or their licensors/suppliers; and (b) all right, title, and interest therein are reserved to and the sole property of Trend Micro, its licensors, and/or such other persons as Trend Micro may determine. Company will not alter or remove Trend Micro's and its licensors' copyright notices and all other proprietary legends from any part of Cloud Service.

**2.6 Changes and Improvements to Cloud Service.** Trend Micro reserves the right (at its discretion and without notice to or consent of any person) to continually improve, update, and offer new versions of Cloud Service (e.g., infrastructure/platform, features or functionality, security, technical configurations, and/or application features) during the Term, to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of use, and cyberthreat environment and capabilities. Any such improvement, change, and/or new version of Cloud Service shall be governed by these Terms of Service and shall not be treated as a breach of these Terms of Service nor give Company a right to a full or partial refund of any monies paid or payable hereunder, but Company acknowledges that the use of some of which may be contingent upon Company's agreement to additional terms.

**2.7 End-of-Life.** Trend Micro reserves the right to discontinue the publication, sale, distribution, subscription, licensing, and support of any or all Cloud Services at any time and for any reason (each event herein "End-of-Life") by announcement or publication of notice to the general public or revision of its price list. Please refer to Trend Micro's then-current End-of-Life Policies and a then-current list of Cloud Services subject to an End-of-Life notice at <https://success.trendmicro.com/support-policies>. The Parties agree that an End-of-Life announcement of any Cloud Service shall not be considered a breach hereof by Trend Micro, nor shall any such End-of-Life entitle Company to any claim for compensation or damages as result of or in connection therewith.

**2.8 Acceptable Use.** Company will not make any use or disclosure of, or perform any acts with respect to, Cloud Service other than as expressly permitted by its Service Description or these Terms of Service. Company may not and agrees that it will not as its material obligation hereunder (and any non-compliance with or breach thereof is a material breach by Company of these Terms of Service), nor will Company authorize, encourage, or permit third parties to:

- (a) Disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Company's use of a Cloud Service or otherwise use a Cloud Service in a way intended to avoid incurring fees or exceeding the Service Capacity limitations in Certificate or otherwise attempt to gain unauthorized access to a Cloud Service.
- (b) Access or use any Cloud Service without permission in accordance herewith, including attempting to probe, scan, or test the vulnerability of the environment of any Cloud Service or to breach any security or authentication measures used by or in such Cloud Service.
- (c) Modify, adapt, copy (except as may be expressly permitted herein with respect to Enabling Software), translate, disassemble, decompile, or reverse engineer Cloud Service (or any of its components or parts thereof), or otherwise attempt to derive the source code of, decrypt, modify, or create derivative works of, Cloud Service or any part thereof; *provided, however*, configuring a Cloud Service within its policy parameters set forth in the Service Description to create Company's Configuration shall not constitute a modification or derivative work.
- (d) License, sublicense, sell, resell, loan, rent, lease, transfer, assign, distribute, or provide the benefit of any Cloud Service (or any portion thereof) to any third party except as specifically set forth in Section 2.11.
- (e) Use Cloud Service: (i) as a paid or unpaid service bureau or otherwise to provide services directly or indirectly to third parties (such as business processing outsourcing); (ii) to provide services to third parties on a time-share basis; or (iii) otherwise commercially exploit or make Cloud Service available to any third party save as set forth in Section 2.11.
- (f) Access, evaluate, observe, or use a Cloud Service (or any of its components) to build or support (or assist a third party in building or supporting) the improvement and/or creation of a competitive product or service, or copy any ideas, features, functions, organization, structure, graphics, or user interface of Cloud Service for any reason.
- (g) Use a Cloud Service: (i) in a manner that violates Applicable Laws or otherwise to engage in or promote any illegal, harmful, fraudulent, offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, or offensive; (ii) in a manner that infringes or misappropriates the intellectual property rights of any third party or otherwise that breaches these Terms of Service; (iii) interfere with the use of Cloud Services by any third party; or (iv) interfere with the proper functioning of the equipment and environment used to provide Cloud Services.
- (h) Publish or otherwise make available to any third party, any benchmark tests or performance analysis relating to Cloud Service without the express written permission of Trend Micro which may be withheld or conditioned at the sole discretion of Trend Micro.

In addition to any other rights or remedies afforded to Trend Micro under these Term of Service or under any Applicable Law, Trend Micro reserves the right, but has no obligation, to investigate suspected violations of undertakings in this Section or any misuse of a Cloud Service and to take remedial action if Company breaches or violates any of the foregoing commitments, including the suspension, removal, or disablement of access to such Cloud Service by Company. In addition, Company agrees that Trend Micro may report any activity that it suspects violates any Applicable Law to the appropriate law or regulatory enforcement officials and provide any assistance required under such Applicable Law. Trend Micro shall have no liability to Company for damages or anything else in the event that Trend Micro takes any such action in good faith.

**2.9 High-Risk Environment.** Cloud Services are not fault-tolerant/fail-safe and are not intended, designed, tested, or certified to be reliable or suitable for use in High-Risk Environments and Trend Micro specifically disclaims any express or implied warranty/condition/guarantee of fitness for use of any Cloud Service in a High-Risk Environment. Trend Micro notifies Company that no Cloud Service has been submitted for compliance testing, certification, or approval for any use by any governmental agency and/or a self-regulatory, standard-setting, or other industry/product-specific consensus organization in a High-Risk Environment. As a condition to Company utilizing any Cloud Service in a High-Risk Environment, Company agrees to: (1) secure and maintain any and all certifications and/or approvals required under any Applicable Law with respect to a Cloud Service that Company intends to deploy in a High-Risk Environment; and (2) undertake all appropriate and/or necessary testing, fail-safe, backup, redundancy and other measures necessary to ensure the safe deployment and use of any Cloud Service by Company in a High-Risk Environment. Any access, deployment, or use of any Cloud Service in a High-Risk Environment shall be at Company's sole liability and risk and Company does hereby irrevocably waive and renounce any and all claims or causes of action for losses, expenses, or damages (of every kind and nature) that Company and its Affiliates may now or hereafter have against Trend Micro and its Affiliates with respect to Company's access, deployment, or use of any Cloud Service in a High-Risk Environment.

**2.10 Applicable Laws.** To the extent applicable to Company's performance of its obligations and/or exercise of its rights hereunder (including without limitation in relation to Company's and its Affiliates' (and its and their Contractors') use and/or configuration of any Cloud Service), Company represents (on an ongoing basis) and warrants to Trend Micro and agrees that Company and its Affiliates' (and its and their Contractors') will: (a) comply with all Applicable Laws (including, without limitation, the GDPR if and to the extent applicable) and will not use or configure any Cloud Service or give any instructions to Trend Micro which would or could infringe, violate, or otherwise not be in compliance with any Applicable Laws or could cause Trend Micro to do so; and (b) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable in order to comply with Applicable Laws with respect hereto. If there is any failure to comply with or breach of these Terms of Service arising out of or related to this Section, Company will promptly (at no cost Trend Micro) do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any Applicable Laws.

**2.11 Affiliate and/or Contractor Use.** For no more than the Service Capacity purchased by or on behalf of Company as evidenced in a Certificate, Trend Micro grants Company the right to authorize and permit (for no additional fees or amounts due Trend Micro other than the fees already payable with respect to the rights granted to Company): (a) Company's Affiliates to access and/or utilize Cloud Services only in connection such Affiliate's Internal Business Use for so long as such person remains an Affiliate of Company; and (b) Contractors to Company and/or its Affiliates to access and/or utilize Cloud Services only in connection with the provision of business process support, technical support, hosting services, and/or outsourcing services to and solely for the use and benefit of Company and/or Affiliates in connection with its and their Internal Business Use and not for the benefit of any third party or such Contractor, all of the foregoing on the terms and subject to the limitations and conditions of these Terms of Service. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Cloud Service will be considered an authorized user of Company under these Terms of Service with respect to such Cloud Service and NOT having any rights or deemed to be a third party beneficiary hereunder in any event or circumstance. Company agrees at all times to require, ensure, and enforce compliance with the grants, terms, conditions, and limitations set forth in these Terms of Service as well as the Data Processing Addendum and Standard Contractual Clauses where applicable by Company's Affiliates (including, without limitation, those applicable to the Affiliate's GDPR Data that may be exported outside of the EEA to Trend Micro by the Affiliate's use of any Cloud Service purchased by Company) and/or Contractors having access to Cloud Services procured hereunder and, further, Company agrees that it shall at all times be and remain legally and financially responsible to Trend Micro for the compliance and non-compliance with, or breach of, these Terms of Service (and the Standard the Data Processing Addendum/Contractual Clauses where applicable) directly or indirectly caused by any Affiliate or Contractor. For the avoidance of doubt, since all Support Services are to be provided by Trend Micro only to Company, no Affiliate and/or Contractor will be entitled to request or receive Support Services directly from Trend Micro.

### **3. Company Responsibilities.**

**3.1 Cloud Service Setup; Registration; Administrators.** Company is responsible for architecting, selecting, configuring, registering, and securing operation of, as well as securing and maintaining connectivity and access to, Cloud Service. Company must provide Trend Micro with all necessary or advisable information to allow Trend Micro to provision and make available Cloud Service, as well as permit registration that requires, among other things, an entity name and address, primary contact name and information, an email address, and other information as may be requested by Trend Micro from time-to-time. Registration information will be treated as the Confidential Information of Company. In accordance with the Service Description, Company will provide to Trend Micro (and maintain), contact information for Company's Administrator(s) who are the only End Users authorized or permitted to provide information required to manage, create Company's Configuration, as well as request and undertake Support Services of a Cloud Service for Company.

**3.2 Authentication Credentials.** Company has sole control over access and use by its End Users, Affiliates, and Contractors of a Cloud Service, and is responsible for ALL activity (whether authorized or unauthorized) occurring on Company's Cloud Service account hereunder. Company is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its access to and use of a Cloud Service. Company will ensure that all End Users comply with Company's obligations under these Terms of Service and that the terms and conditions of Company's agreement with each End User are consistent with these Terms of Service. If Company becomes aware of any breach or non-compliance of Company's obligations under these Terms of Service by an End User or other third party such as an Affiliate or Contractor, Company will immediately terminate such person's access to Cloud Service and notify Trend Micro. Further, Company is solely responsible for population, maintenance, security, protection, loss prevention, and backup of Company's systems and networks, Company Data, and other content, information, and devices.

**3.3 Internet Transmission.** Company understands and agrees that no data transmission over the Internet by Company is guaranteed to be secure by Trend Micro. Trend Micro is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside Trend Micro's control. Company is solely responsible for maintaining the security of its networks, servers, applications and access codes.



**3.4 Fees.** Company will timely pay to its Reseller or directly to Trend Micro, as the case may be, the applicable fees for access to and/or use of Cloud Service in accordance with the Service Capacity that is purchased by Company. Invoicing and collection of the fees and any applicable Taxes will be by its Reseller or directly by Trend Micro, as the case may be. Except as may be expressly set forth in [Sections 7 and 10](#), the fees Company pays for access to and use of Cloud Service are nonrefundable or otherwise subject to credit or offset. Trend Micro reserves the right to change or modify published fees for Cloud Services that are purchased directly from Trend Micro in a manner and at such times as Trend Micro shall determine in its discretion.

**3.6 Taxes – Direct Orders.** The fees and other charges in an Order placed directly with Trend Micro do not include foreign and domestic national, federal, dominion, provincial, state, municipal, or local sales, use, VAT, GST/GSM, excise, service, or similar transactional taxes (collectively “Taxes”) now or hereafter levied under Applicable Laws. Where applicable on direct Orders, Company will provide Trend Micro all required information for the calculation, invoicing, and remittance of all applicable Taxes that Trend Micro reasonably requests to determine whether Trend Micro is obligated to collect and remit any Taxes from Company, including Company’s correct name, location, and sales tax or VAT/GST/GSM identification number where applicable. If Company is legally entitled to an exemption from the collection and remittance of any otherwise applicable Taxes, Company is responsible for providing Trend Micro with legally-sufficient tax exemption certificates for each taxing jurisdiction. Otherwise, Company will be invoiced for, and pay, all Taxes as required to be collected by Trend Micro under Applicable Law.

**3.7 Compliance; Audit.** Trend Micro may request, and Company will provide within thirty (30) days from the request date, a system-generated report verifying Company’s access to and use of the Cloud Services, if and only if, a Cloud Service purchased hereunder is programmed with the technological features to provide such access and use verification (including Service Capacity where applicable). In any event, Trend Micro has the right, at its expense, to audit Company’s compliance with these Terms of Service, and Company will provide all records and information reasonably necessary for Trend Micro to successfully perform such audit. If any audit reveals that Company owes fees to Trend Micro, or its Reseller, Company will promptly remit such underpaid amounts. Company consents to Trend Micro’s disclosure of such audit results to the Reseller.

#### **4. Company Data; Optional Features; Personal Data Protection; GDPR Data Processing.**

##### **4.1 Responsibility for Company Data; Right to Use Company Data; Optional Features.**

**4.1.1 Responsibility for Company Data.** Company is solely responsible for the content of all Company Data and represents to Trend Micro (on an ongoing basis) and agrees to the extent required by Applicable Law or any agreement of Company with a third party, that Company will: (a) with respect to all Company Data, provide all notices to, and procure and maintain all necessary rights, consents, and approvals; and (b) take any and all other actions as may be required, to ensure the lawfulness of Company’s access to and/or use of each Cloud Service (and applicable Support Services), including without limitation its transmission or making available of Company Data (some of which may include Personal Data) to Trend Micro and Trend Micro’s receipt and use of such Company Data in that connection, without Company in any such case violating any Applicable Laws or the rights of any third party or otherwise obligating Trend Micro to any third party. Trend Micro does not and will not assume any obligations to Company with respect to Company Data or Company’s use of Cloud Service other than as may be expressly set forth in these Terms of Service including in relation to its provision of Support Services.

**4.1.2 Right to Use Company Data.** Company hereby grants Trend Micro a limited, non-exclusive, royalty-free, paid-up, license to access and use Company Data (unless and only to the extent Company opts-out of such uses through Company’s Configuration): (a) as necessary for Trend Micro to provide each Cloud Service and provide Support Services to Company; (b) to maintain and improve the operation, security efficacy, and functionality of Trend Micro’s software and services including Cloud Services; (c) to identify and collect information on potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors in order to continually provide Cloud Services and to improve Trend Micro’s subject-matter databases; (d) for administration of these Terms of Service and each Cloud Service; (e) to comply with its legal obligations and exercise its rights under Applicable Laws; and (f) for other purposes set forth in the these Terms of Service and/or Trend Micro’s Global Privacy Notice.

**4.1.3 Company’s Configuration.** Company acknowledges and agrees that a Cloud Service may contain certain Optional Features. Company is solely responsible for selecting (during activation/initial deployment and at all times thereafter) and maintaining Company’s Configuration of each Cloud Service and assuring that Company’s Configuration conforms to Company’s requirements, policies, and procedures regarding any processing of Company Data (including any GDPR Data and/or other Personal Data) and complies with all Applicable Laws in each jurisdiction to which Company’s processing of any Company Data in connection with its use of any Cloud Service may be subject (including any GDPR Data and/or Personal Data) and/or from which Company is accessing and utilizing an Optional Feature. At the initial activation and deployment of each Cloud Service and at any time thereafter, Company agrees to: (a) review the capabilities, features, and functionality of the Optional Features and all other features and functionality in the Service Description thereof; and (b) activate, configure, restrict, limit, and/or disable each Optional Feature as may be described in the Service Description in order to cause Company Data to be processed in a manner that meets Company’s specific needs (each Cloud Service as configured by or on behalf Company from time-to-time is herein referred to as “**Company’s Configuration**”). Except for Optional Features and permissions and administrative selections described in the Service Description, Company understands that each Cloud Service is a standardized service hosted by or on behalf of Trend Micro and no additional or different instructions or configurations are available to Company for such Cloud Service.

**4.2 Personal Data Protection.** A Cloud Service and/or Support Services may employ applications and tools that receive Company Data that includes one or more data elements that are Personal Data under Applicable Laws. In accordance with the instructions made known through Company’s Configuration and these Terms of Service, Trend Micro may access, receive, process, copy, backup, store, transfer and use Personal Data which may take place in, from and to the United States of America, Europe, or other countries or jurisdictions, potentially outside of the country of residence of Company, its Affiliates, and/or its and their End Users. Trend Micro has and will continue to implement technical, organizational and administrative security measures in order to protect the Personal Data provided to and utilized in connection with each Cloud Service from unauthorized access and misuse while under Trend Micro’s custody or control, including when Trend Micro utilizes any third party subcontractors. Trend Micro restricts its personnel from accessing and/or utilizing Personal Data without authorization and imposes appropriate obligations upon its personnel regarding Personal Data protection.

**4.3 GDPR Data Processing; Relationship of the Parties.** By agreeing to these Terms of Service, each of Company and Trend Micro acknowledges and agrees that it is also entering into and agreeing to be bound by: (a) the Data Processing Addendum; and (b) the Standard Contractual Clauses, it being further agreed that each of the Addendum and Clauses shall only apply, if and to the extent that Trend Micro acts as a processor or subprocessor for any GDPR Data (but does not apply to other Company Data/Personal Data) that Company (and its Affiliates that have been authorized to access and/or utilize Cloud Services hereunder) provides or makes available to Trend Micro hereunder. With respect to each Affiliate of Company that accesses or utilizes any Cloud Service as permitted herein, Company hereby enters into and agrees to be bound by the Data Processing Addendum and the Standard Contractual Clauses for itself and on behalf of each such Affiliate, and Company represents and warrants to Trend Micro that Company is duly authorized, and Company and all such Affiliates have each taken, all necessary action to do so validly.

## **5. Support Services; Updates to Enabling Software.**

**5.1 Support Services.** Trend Micro will provide Support Services for each Cloud Service to Company in connection herewith on the terms, conditions, and descriptions set forth in the Support Services terms posted at <https://success.trendmicro.com/technical-support>, as modified from time to time, subject to the conditions stated in such Support Service Description (the “**Support Services**”). Service Level Targets for Support Services may be found at [www.trendmicro.com/severitydefinitions](http://www.trendmicro.com/severitydefinitions), which Service Level Targets may be revised by Trend Micro at its discretion from time-to-time. Except for the Support Services, these Terms of Service do not require Trend Micro to provide Company with any configuration, deployment, training, consulting services, or other technical assistance of any kind. Each Cloud Service is periodically monitored by Trend Micro based on its Service Level Targets and adjustments are made by Trend Micro as needed.

**5.2 Updates to Enabling Software.** At its sole discretion, Trend Micro may provide periodic updates to the Enabling Software, if any. If available, such updates may include bug fixes, new features and/or enhancements. Company is solely responsible for deploying such updates at Company’s own cost as soon as possible. Trend Micro’s obligation to provide Support Services with respect to Enabling Software as well as a Cloud Service continuing to meet its Service Description and these Terms of Service depends upon Company’s prompt installation of any and all such updates to Enabling Software that Trend Micro makes available to Company.

## **6. Confidentiality; Feedback.**

**6.1 Confidentiality/Non-Disclosure.** Each Party hereto acknowledges that by reason of its relationship with the other Party hereunder, it may have access to confidential information and materials concerning the other Party’s business, technology, and/or products that is confidential to the other Party (“**Confidential Information**”). Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each Party agrees that it will not use such Confidential Information, except as authorized under these Terms of Service, and will protect Confidential Information at least to the same extent as a reasonable person would undertake to protect such Confidential Information. Neither Party may use the other Party’s Confidential Information except to perform its duties or exercise its rights under these Terms of Service. The Confidential Information restrictions will not apply to information or data that is: (a) already known to the receiving Party at the time of access hereunder; (b) becomes publicly available through no wrongful act of the receiving Party; (c) independently developed by the receiving Party without benefit of the disclosing Party’s Confidential Information; (d) has been rightfully received from a third party not under obligation of confidentiality; (e) disclosed in any legal proceeding arising from or in connection with these Terms of Service; or (f) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure (only if legally permissible) adequate for the owning Party to take reasonable action to prevent such disclosure. Unless otherwise agreed to by both Parties, upon termination of these Terms of Service, each Party will return to, or irretrievably destroy, the other Party’s Confidential Information in its possession. **In the event that the Parties hereto have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the Effective Date of these Terms of Service, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by these Terms of Service ONLY with respect to the subject matter hereof and the transactions undertaken pursuant hereto.**

**6.2 Feedback.** Notwithstanding anything to the contrary: (a) Trend Micro will have no obligation of any kind to any person with respect to any Cloud Service-related comments, suggestions, design changes or improvements, that Company may elect to provide to Trend Micro in either verbal or written form (collectively, “**Cloud Service Feedback**”), and (b) Trend Micro and its Affiliates and licensors are hereby granted by Company a perpetual, irrevocable, royalty-free right and license to use any ideas, concepts, know-how or techniques, in whole or in part, contained in Cloud Service Feedback provided now or in the future: (i) for any purpose whatsoever, including developing, making derivative works, manufacturing, improving, enhancing, making, having made, distributing, and/or marketing Trend Micro products and/or services incorporating Cloud Service Feedback in whole or in part, and (ii) which right and license is granted without any restrictions or limitations, including requiring the payment of any license fees, royalties, or other consideration.

## **7. Limited Warranty and Exclusive Remedy; Disclaimer of All Other Conditions, Guarantees, and Warranties.**

**7.1 Limited Warranty and Exclusive Remedy.** In connection with a Cloud Service, Trend Micro warrants only to Company that such Cloud Service will substantially conform to its then-current Service Description under normal use and circumstances until the expiration or termination of Company’s paid right to access and use such Cloud Service under these Terms of Service. The foregoing limited warranty does not cover events or circumstances caused by accident, abuse or use of Cloud Service in a manner inconsistent with these Terms of Service, the Service Description, or other guidance provided by Trend Micro or resulting from events of Force Majeure. If it is established that Trend Micro has breached the above warranty after notice from Company as required below, Trend Micro may, at its option: (a) use reasonable efforts to cure the breach; or (b) in the event Trend Micro cannot, after commercially practicable attempts to do so, achieve the remedy in (a) immediately above, either Trend Micro or Company may terminate these Terms of Service and Trend Micro will provide a refund (within thirty (30) days) of unused fees pre-paid by Company, if any, as of the effective date of such termination. To benefit from this warranty and the remedies stated herein, Company must report in writing to Trend Micro, the alleged breach of warranty with reasonable specificity within ten (10) days of its occurrence.

The above remedies for breach of the foregoing warranty are Trend Micro's sole and exclusive obligation and liability to Company and Company's sole and exclusive right and remedy for Trend Micro's breach of the foregoing warranty notwithstanding any other provision of these Terms of Service to the contrary.

**7.2 Disclaimer of All Other Conditions, Guarantees, and Warranties.** EXCEPT AS SET FORTH IN SECTION 7.1, CLOUD SERVICES AND SUPPORT SERVICES ARE PROVIDED "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" AND WITHOUT ANY OTHER WARRANTY, CONDITION, UNDERTAKING, OR GUARANTEE OF ANY KIND OR NATURE. TREND MICRO (ON BEHALF OF ITSELF AND ITS AFFILIATES/SUPPLIERS/LICENSORS/RESELLERS) EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, CONDITIONS, UNDERTAKINGS, OR WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) ARISING FROM OR RELATED TO A STATUTE, CIVIL/COMMERCIAL CODE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AND/OR CONDITION OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR (SUCH AS A HIGH-RISK ENVIRONMENT) OR GENERAL PURPOSE; TITLE; SATISFACTORY QUALITY; ACCURACY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR ABILITY TO ACHIEVE A PARTICULAR RESULT. FURTHER, TREND MICRO DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT: (A) A CLOUD SERVICE WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (B) THE FUNCTIONS AND FEATURES CONTAINED IN A CLOUD SERVICE WILL MEET THE REQUIREMENTS OF COMPANY OR THAT A CLOUD SERVICE WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEEDS OR REQUIREMENTS (SUCH AS USE IN A HIGH-RISK ENVIRONMENT) OF COMPANY; (C) USE OF A CLOUD SERVICE WILL PROVIDE COMPLETE AND ABSOLUTE PROTECTION OF COMPANY'S SYSTEMS, NETWORKS, DEVICES, ASSETS, INFORMATION, AND/OR DATA FROM AND AGAINST ANY OR ALL CYBERTHREAT DATA OR OTHER POSSIBLE RISKS; (D) USE OF A CLOUD SERVICE WILL DETECT, IDENTIFY, BLOCK, REMOVE, REMEDIATE, OR RESOLVE SOME, ANY, OR ALL CYBERTHREAT DATA; (E) A CLOUD SERVICE WILL BE PROVIDED OR PERFORMED ERROR-FREE OR THAT TREND MICRO WILL CORRECT ALL ERRORS IN CLOUD SERVICES; OR (F) A CLOUD SERVICE WILL OPERATE IN COMBINATION WITH COMPANY DATA, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, CLOUD SERVICES, OR DATA NOT PROVIDED OR REQUIRED BY TREND MICRO.

## **8. Exclusions From and Limitation of Liability; Maximum Liability.**

**8.1 Exclusions From and Limitation of Liability.** IN NO EVENT OR CIRCUMSTANCE WILL TREND MICRO (OR ITS AFFILIATES, LICENSORS, OR SUPPLIERS) BE LIABLE TO COMPANY OR ITS AFFILIATES FOR ANY EXCLUDED DAMAGES ARISING FROM OR RELATING TO THESE TERMS OF SERVICE, TREND MICRO'S (OR ITS AFFILIATES) PERFORMANCE UNDER THESE TERMS OF SERVICE, OR ANY CLOUD SERVICE/SUPPORT SERVICE, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THESE TERMS OF SERVICE FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF TREND MICRO AND/OR ITS AFFILIATES MAY HAVE BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND REGARDLESS OF THE NATURE OF THE CLAIM OR CAUSE OF ACTION OR THEORY ASSERTED INCLUDING, WITHOUT LIMITATION; BREACH OF CONTRACT; STRICT LIABILITY; MISREPRESENTATION; UNDER ANY EXPRESS/IMPLIED/STATUTORY WARRANTY, GUARANTEE, DUTY, OR CONDITION; UNDER ANY STATUTE OR CIVIL/COMMERCIAL CODE; IN TORT (INCLUDING NEGLIGENCE); OR ANY OTHER LEGAL, IMPLIED, STATUTORY, OR EQUITABLE THEORY. THE PARTIES AGREE THAT NONE OF THE EXCLUDED DAMAGES REFERENCED IN THIS SECTION 8.1 ARE ACTUAL DIRECT DAMAGES AS REFERENCED IN SECTION 8.2.

IF COMPANY IS IN THE EUROPEAN ECONOMIC AREA, REFERENCES TO "EXCLUDED DAMAGES" SHALL ALSO MEAN ANY LOSSES OR DAMAGES WHICH: (A) WERE NOT REASONABLY FORESEEABLE BY BOTH PARTIES; (B) WERE KNOWN TO COMPANY BUT NOT TO TREND MICRO; AND/OR (C) WERE REASONABLY FORESEEABLE BY BOTH PARTIES BUT COULD HAVE BEEN PREVENTED BY COMPANY SUCH AS, FOR EXAMPLE, LOSSES CAUSED BY VIRUSES, MALWARE, OR OTHER MALICIOUS PROGRAMS, OR LOSS OF OR DAMAGE TO COMPANY DATA OR COMPANY'S FAILURE TO PROPERLY BACK-UP SUCH COMPANY DATA.

**8.2 Maximum Liability – Actual Direct Damages.** THE LIABILITY OF TREND MICRO, ITS AFFILIATES, AND ITS THEIR SUPPLIERS (INCLUDING ANY HOSTING PLATFORM) AND LICENSORS TO COMPANY FOR LOSSES, EXPENSES, OR DAMAGES RELATED TO OR ARISING FROM ALL RELATED AND UNRELATED CAUSES OF ACTION, CLAIMS, SUITS, AND OTHER LEGAL PROCEEDINGS OF ANY KIND OR NATURE (REGARDLESS OF WHETHER BASED ON EXPRESS/IMPLIED/STATUTORY WARRANTY, GUARANTEE, CONDITION, MISREPRESENTATION, CONTRACT AND BREACH THEREOF, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), UNDER ANY CIVIL/COMMERCIAL CODE, AND/OR ANY OTHER OR EQUITABLE OR LEGAL THEORY) THAT ARE ACTS OR OMISSIONS OF TREND MICRO SPECIFICALLY ATTRIBUTABLE TO: (A) AN UNCURED MATERIAL BREACH OF THESE TERMS OF SERVICE; (B) THE RELATIONSHIP OF PARTIES; AND/OR (C) THE PROVISION/SUPPLY OF CLOUD SERVICES AND/OR SUPPORT SERVICES, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE (AND NOT PER INCIDENT OR PER CLAIMANT) FOR ALL CLAIMS AND CAUSES OF ACTION, THE TOTAL FEES AND OTHER AMOUNTS PAID BY COMPANY FOR THE CLOUD SERVICE GIVING RISE TO OR CAUSING SUCH LOSS, EXPENSE, OR DAMAGE IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LOSS, EXPENSE, OR DAMAGE, LESS ANY REFUNDS OR CREDITS PREVIOUSLY RECEIVED BY COMPANY FROM TREND MICRO WITH RESPECT THERETO.

**8.3 Basis of the Bargain.** Each Party recognizes and agrees that the waivers, warranty limitations, as well as disclaimers and exclusions from and limitations of liability and/or remedies in these Terms of Service are a material and essential basis of these Terms of Service; reflect a reasonable allocation of risk between the Parties; are fair, reasonable, and a fundamental part of these Terms of Service; and each has been taken into account and reflected in determining the consideration to be given by each Party under these Terms

of Service and in the decision by each Party to enter into these Terms of Service. The Parties acknowledge and agree that absent any of such waivers, disclaimers, exclusions, and/or limitations of liability/remedies, the provisions of these Terms of Service, including the economic terms, would be substantially different, or in the alternative, these Terms of Service would not have been consummated.

## **9. Term and Termination.**

**9.1 Term.** These Terms of Service and Company's access to Cloud Service will become effective as of the date of issuance of a Certificate to Company by Trend Micro and such Cloud Service is made available to the Company by Trend Micro and shall continue in effect thereafter as set forth in the applicable Certificate and these Terms of Service until such outstanding Subscription Period for a Cloud Service purchased hereunder is completed (the "Term"), unless earlier terminated or suspended in accordance with this Section and/or these Terms of Service.

**9.2 Suspension and Termination by Trend Micro.** Trend Micro may suspend or terminate Company's right to use Cloud Service (in whole or in part) at any time upon written notice if Trend Micro determines that: (a) Company or one or more of its Affiliates, Contractors, or End Users of Cloud Service (i) poses a security risk to Cloud Service or any third party, (ii) may adversely impact Cloud Service or any third party, (iii) is in non-compliance in any way with [Section 2.8](#), or (iv) may subject Trend Micro, its Affiliates, its licensors, or any third party to liability; or (b) Company is in material breach of these Terms of Service, including a breach of or non-compliance by Company with any of its agreements in [Sections 2.1 or 4.1](#). Company will cease use of Cloud Service identified in such notice(s) during any period of suspension, or upon termination of these Terms of Service or other termination of Company's right to use such Cloud Service. For any termination or suspension by Trend Micro in accordance with the foregoing, Trend Micro will not provide, or be liable for, any refund or proration of fees.

**9.3 Termination by Company.** Company may terminate for its convenience, these Terms of Service and/or Company's use of a Cloud Service at any time with written notice to Trend Micro, in which event Company will NOT be entitled to a refund or credit of unused fees (if any) pre-paid by Company for access to and use of such Cloud Service (s). Notwithstanding the foregoing, only if Company is entitled to terminate these Terms of Service for a material breach by Trend Micro (after giving Trend Micro at least twenty (20) days prior detailed written notice and an opportunity to cure such material breach during such notice period) of these Terms of Service, Company will be entitled to receive a refund from Trend Micro of the applicable unused fees (if any) pre-paid by Company for access to Cloud Service.

**9.4 Company's Termination Duties.** Upon expiration or termination of these Terms of Service and/or Company's use of Cloud Service for any reason or no reason, Company will: (a) cease any access and use of Cloud Service; and (b) irretrievably destroy all copies in Company's possession or control of the Enabling Software, including any Service Description provided by Trend Micro. Upon request, Company will certify in writing that the foregoing has occurred. Termination does not relieve Company from Company's obligation to pay fees and Taxes that remain unpaid.

**9.5 Survival.** Upon termination or expiration of these Terms of Service and regardless of reason therefor, the following Sections shall survive such termination or expiration: [Sections 1, 2.2, 2.3, 2.4, 2.5, 2.8, 2.9, 2.10, 2.11, 3, 4, 6, 7, 8, 9, 10, 11, and 12](#) and any other provision that expressly states that its terms and conditions shall survive the expiration or termination of these Terms of Service.

## **10. Intellectual Property Indemnity.**

**10.1 IP Claim Indemnity.** Trend Micro (at its cost) will defend ONLY Company from each IP Claim and indemnify Company from the resulting costs and damages with respect to each such IP Claim finally awarded against Company ONLY that are specifically attributable to such IP Claim or those amounts agreed to by Trend Micro in a monetary settlement of such IP Claim, subject always to the conditions, qualifications and limitations in this Section 10. No settlement of any IP Claim will be made by Company (and Trend Micro will have no responsibility or obligation hereunder or otherwise therefor) without Trend Micro's express written consent, which may be withheld at its sole and absolute discretion. The obligation of Trend Micro under this Section 10 for any IP Claim is subject to and conditioned on Company giving Trend Micro: (a) prompt written notice of any IP Claim (but in any event notice in sufficient time for Trend Micro to respond without prejudice to its position), provided that a failure to provide notice shall only relieve Trend Micro of its indemnity obligation to the extent Trend Micro was prejudiced by such failure; (b) sole and complete control and authority over the defense, negotiations, and settlement of such IP Claim; and (c) reasonable requested information, cooperation and assistance, at Trend Micro's expense, with regard to the defense, negotiations, or settlement of such IP Claim. Without Company's consent, Trend Micro will not settle with respect to Company, any IP Claim to the extent such settlement requires that Company admit any liability on the part of Company with respect to such IP Claim or pay any money therefor. Company may participate in the defense of any IP Claim at its cost with counsel of its selection. **This indemnity is personal to Company and may not be assigned/transferred (in whole or in part) or otherwise passed through to any third party.**

**10.2 IP Claim Mitigation.** Should a Cloud Service at any time become, or in Trend Micro's opinion be likely to become, the subject of an IP Claim, Trend Micro shall have the right, at its sole option to: (a) procure for Company the right to continue using such Cloud Service as provided hereunder, or (b) modify such Cloud Service so that it no longer is the subject of an IP Claim, while maintaining substantially the same utility or functionality of the unmodified utility or functionality. If neither (a) or (b) are commercially practicable in Trend Micro's opinion, Trend Micro may terminate these Terms of Service as to such Cloud Service and any related the rights granted hereunder to access and utilize the Cloud Service upon written notice, in which event Company will cease further use of the Cloud Service and return or uninstall and irrevocably destroy all copies of any Enabling Software (and its documentation) and, thereafter, Trend Micro will promptly refund to Company any unused, prepaid fees Company may have paid for such Cloud Service. The Parties agree that any termination hereof in accordance with this Section 10 shall not be treated as a breach of these Terms of Service by Trend Micro and shall not entitle Company to any claim for damages, losses, or expenses of any kind or nature arising from or related to such termination including for replacement cost or loss of use of the Cloud Service or any lost profits, savings, or revenue arising from or related to the Cloud Service. **This Section 10 states Trend Micro's sole and exclusive obligation and liability to Company, and Company's sole and exclusive right and remedy against Trend Micro, for any IP Claim. Except as set forth herein this Section 10, Company acknowledges and agrees that no indemnity is given by Trend Micro with respect to any Cloud Service and Trend Micro specifically denies and disclaims any obligation to indemnify company and/or its affiliates from and against any other matter or thing in any event or circumstance. Notwithstanding anything contained herein to the contrary, Trend Micro's liability shall not be limited by [Section 8](#) to the extent of monies payable by Trend Micro by operation of this Section 10.**

## 11. General Provisions.

**11.1 Assignment, Delegation; Sublicensing; Subcontracting** Company will not assign (in whole or in part) these Terms of Service, or delegate or sublicense any of Company's rights under these Terms of Service, without Trend Micro's prior written consent. Any purported assignment or transfer in violation of this Section 11.1 will be void. In its sole discretion and without notice to Company, the Parties agree that Trend Micro may assign these Terms of Service to any Trend Micro Affiliate, or delegate or sublicense the performance of Trend Micro's obligations to any Trend Micro Affiliate or to any subcontractor provided that Trend Micro shall remain responsible for the performance of such obligations by such persons as though such persons were Trend Micro. Subject to the foregoing, these Terms of Service will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

**11.2 Interpretation.** The headings within these Terms of Service are for convenience only and will not affect the interpretation of these Terms of Service. The words "include", "includes", and "including" shall be interpreted as introducing a list of examples which do not limit the generality of any preceding words or any words in the list of examples.

**11.3 No Waivers.** The failure by either Party to enforce any provision of these Terms of Service will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. To be effective, all waivers must be in writing, specifying the provision and actions or inactions being waived, and signed by the Parties.

**11.4 Export/Import Control.** In connection with these Terms of Service, the access, use, export or re-export of Cloud Service and related technical data and services (collectively "**Controlled Technology**") is subject to Applicable Laws with respect to the export (including "deemed export" and "deemed re-export" regulations) and import of Controlled Technology by Company, its Affiliates, Contractors, and/or its End Users. In connection therewith, Company acknowledges that each Cloud Service is designed with capabilities to permit (at its and their discretion) Company, its Affiliates, Contractors, and/or its End Users to access the Cloud Service without regard to geographic location and to transfer or otherwise move Company Data between the Cloud Service, its Affiliates, Contractors, and/or its End Users/Contractors anywhere in the world. Company acknowledges and agrees that it is solely responsible for the authorization and management of End User accounts, as well as export/import control and geographic transfer of Company Data in connection with the Cloud Service. Company agrees that it will at all times comply with each Applicable Law (now or hereafter in effect) that applies to direct/indirect export, re-export, or import of Controlled Technology by Company, its Affiliates, and its and their Contractors, and/or its End Users and/or the performance of Company, its Affiliates, its or their Contractors, and/or its End Users hereunder that: (a) requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; (b) prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or (c) restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Company represents and warrants to Trend Micro that neither Company, its Affiliates, its Contractors, nor any of its End Users are under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or prohibited entity as defined in any Applicable Law.

**11.5 Government Agency Use.** Each Cloud Service (including any component software) and accompanying Service Description have been developed solely at private expense by Trend Micro and/or its suppliers/licensors, consisting of commercially-available items, commercially-available computer software, commercially-available hardware, technical documentation, and/or commercially-available Service Description with the same rights and restrictions generally applicable to Cloud Service. Access and use of Cloud Service by any Government Agency may be subject to mandatory applicable laws; *provided, however*, except for the limited right to access and use Cloud Service granted in Sections 2.1 above, no right, title, or interest in or to any software, hardware, binary code, or service (or updates and documentation) is granted or transferred hereunder to any Government Agency accessing and/or using Cloud Service. If any Government Agency requires or needs greater or different rights in or to access and/or use Cloud Service other than those rights that are granted in these Terms of Service, the Parties will discuss such additional requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the parties will enter into a specific written agreement with respect thereto. In this Section 11.5, "**Government Agency**" shall mean a national, federal, provincial, state, municipal, and/or local agency or entity that Orders through a Reseller for the right to access/use a Cloud Service under these Terms of Service.

### 11.6 Notices.

**11.6.1 If to Company.** Trend Micro may provide any notice to Company under these Terms of Service: (a) if a legal notice, by sending a message to the email address then associated with Company's Account, if any; and (b) if product or support notices, by posting a notice on <https://success.trendmicro.com/technical-support> (the "**Trend Micro Site**"). Product or support notices posted on the Trend Micro Site will be effective upon posting and legal notices that Trend Micro provides by email will be effective when Trend Micro sends the email. It is Company's responsibility to keep Company's email address current.

**11.6.2 If to Trend Micro.** To give Trend Micro legal notice under these Terms of Service, Company must contact Trend Micro by email to [legal\\_notice@trendmicro.com](mailto:legal_notice@trendmicro.com). Trend Micro may update the email for notices by posting a notice on the Trend Micro Site. Notices provided by email will be effective one (1) business day after they are sent. Notices regarding Support Services will be sent in accordance with Section 5.1 and notices or Orders regarding new or additional Cloud Services should be directed to the appropriate Reseller or Trend Micro's sales executive, as the case may be.

**11.7 Severability; Enforcement.** The Parties agree that the unenforceability or invalidity of any term or provision of these Terms of Service shall not impair the enforceability or validity of any other part of these Terms of Service. In the event that any term or provision of these Terms of Service conflicts with the governing law under which these Terms of Service is to be construed or if any such term or provision is held invalid or unenforceable in whole or in part by a court with jurisdiction over the Parties or in any arbitration convened hereunder, the Parties agree that the court or arbitrator(s) (as the case may be) making such determination shall have the power, and the Parties hereby request that such court or arbitrator(s) exercise such power, to modify, amend, or restate any such unenforceable term or provision of these Terms of Service in lieu of severing such unenforceable term or provision in its entirety, whether by rewriting the offending term or provision, deleting any or all of the offending term or provision, adding additional language to these Terms of Service, or by making such other modifications as it deems appropriate



that is valid and enforceable and that comes closest to expressing the original intention of the Parties to the greatest lawful extent under these Terms of Service.

**11.8 Excused Performance Events.** Trend Micro shall not be liable for any delay or failure to perform its obligations hereunder due to any Excused Performance Event. Trend Micro will (a) take commercially reasonable steps to minimize and/or mitigate any delays or failures related to any Excused Performance Event, and (b) provide prompt written notice of the nature of such Excused Performance Event and the expected duration thereof to Company, but this Section does not excuse Trend Micro's obligation to take reasonable steps to follow its normal disaster recovery procedures. Trend Micro will resume performing its affected obligations promptly following the removal or reasonable circumvention of such Excused Performance Event. The Parties agree that any delay or failure arising from or related to a Excused Performance Event shall not constitute a breach of these Terms of Service by Trend Micro.

**11.9 Independent Contractors.** Nothing in these Terms of Service is intended or shall be construed to create or establish any agency, partnership, or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder, and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. Neither Party has any authority to act as agent for, or to incur any obligations on behalf of or in the name of, the other Party or its Affiliates.

**11.10 Third Party Beneficiaries.** All disclaimers, limitations of damages and remedies, and exclusions and limitations of liabilities in these Terms of Service that are applicable to Trend Micro also extend to and apply in respect of Trend Micro's Affiliates, suppliers, and licensors as third party beneficiaries. Except as set forth in the immediately preceding sentence, these Terms of Service are entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. Except as set forth in the first sentence of this Section, these Terms of Service do not, and shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties including employees, independent consultants, agents, suppliers, and Affiliates of a Party, or otherwise create any obligation or duty to any third party; *provided, however*, notwithstanding anything contained herein these Terms of Service to the contrary, Trend Micro's Affiliates, licensors, and Resellers shall be intended third party beneficiaries for the exclusions, limitations, and disclaimers with respect to Cloud Services as stated in Sections 2.8, 2.9, 7.2, and 8 of these Terms of Service.

## **12. Trend Micro Licensing Entity; Governing Law; Dispute Resolution; Arbitration; Venue/Jurisdiction.**

**12.1 General; Trend Micro Licensing Entity.** The Parties agree that the specific Trend Micro entity that is the Party to these Terms of Service for each individual transaction shall be the Trend Micro entity/Affiliate that is stipulated below and such entity shall be conclusively be deemed for all purposes, to be the Trend Micro Party to these Terms of Service and to the Data Processing Addendum, and the publisher/licensor of Software, supplier of Appliances, and/or provider of Support Services, that is procured by Company hereunder (in each instance, the "Licensing Entity"). The Parties agree that the governing law (without giving effect to its rules and principles relating to conflict of laws) as determine and agreed in this Section 12 shall solely and exclusively apply to and govern, interpret, and sets forth all of Trend Micro's and Company's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of these Terms of Service and the Cloud Services provided/secured hereunder. The United Nations Convention on Contracts for the International Sale of Goods does not apply to, and is specifically excluded from application hereto, in any event or circumstance.

**12.2 North America:** If Company is located (as evidenced by the Certificate) in the United States of America or Canada, the Licensing Entity of Cloud Service is stipulated as: Trend Micro Incorporated, 225 E. John Carpenter Freeway, Suite 1500, Irving, TX 75062, USA. The Parties agree that these Terms of Service is solely and exclusively governed by the laws of the State of New York, USA. The Parties agree that the provisions of the Uniform Computer Information Transactions Act ("UCITA"), as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to these Terms of Service, and the Parties waive any and all rights they may have under any laws(s) adopting UCITA in any form. The Parties mutually agree to and do hereby irrevocably submit and consent to the sole and exclusive *in personam* jurisdiction of: (a) the United States District Court for the Southern District of New York, located in the County of New York, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (b) the Supreme Court of the State of New York, located in the County of New York that will have such sole and exclusive *in personam* jurisdiction over such action, matter, or proceeding. In Canada, the following language shall apply hereto: The Parties have required that these Terms of Service be drawn up in English and have also agreed that all notices or other documents required by or contemplated in these Terms of Service be written in English. *Les Parties ont requis que cette convention soit rédigée en anglais et ont également convenu que tout avis ou autre document exigé aux termes des présentes ou découlant de l'une quelconque de ses dispositions sera préparé en anglais.*

**12.3 Central America and South America (except Brazil).** If Company is located (as evidenced by the Certificate) in Central America or South America (other than Brazil), the Licensing Entity of Cloud Services is stipulated as: Trend Micro Latinoamérica, S. A. de C. V., Insurgentes Sur No. 813, Piso 11, Col. Nápoles, 03810 México, D. F. The Parties agree that these Terms of Service are solely and exclusively governed by the federal laws of the Republic of Mexico. The courts located in Mexico City, Federal District, shall each have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**12.4 Brazil.** If the Licensing Entity's principal place of business is located (as evidenced by the Certificate) in Brazil, the Licensing Entity of Cloud Services is stipulated as: Trend Micro do Brasil, LTDA, Rua Joaquim Floriano, 1.120 – 2º andar, CEP 04534-004, São Paulo/Capital, Brazil. The Parties agree that these Terms of Service are solely and exclusively governed by the federal laws of Brazil. The courts located in São Paulo, Brazil shall each have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**12.5 Colombia.** If the Licensing Entity's principal place of business is located (as evidenced by the Certificate) in Colombia, the Licensing Entity of Cloud Services is stipulated as: Trend Micro Colombia, S.A.S., Calle 97ª# 9ª -50 of. 503, Bogotá, Colombia. The Parties

agree that these Terms of Service are solely and exclusively governed by the laws of Colombia. The courts located in Bogotá, Colombia shall each have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**12.6 Europe (as limited below):** If Company is located (as evidenced by the Certificate) in **European Economic Area (EEA)**, the **United Kingdom** if such be necessary for post-Brexit separation, or **Switzerland**, the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro EMEA Limited, a company incorporated in Ireland under number 364963 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. The Licensing Entity and Company referenced in this Section 12.6, agree that these Terms of Service, the performance of the Parties hereunder, and all disputes arising out of or related hereto will be governed by and construed solely in accordance with the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts. Each of the Parties represents and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens* in such courts.

**12.7 Russia, Turkey, Middle East (other than Israel) and Africa:** If Company is located (as evidenced by the Certificate) in **Russia, Turkey, Africa, or the Middle East** (other than Israel), the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro DMCC, a limited liability company incorporated in United Arab Emirates having its registered office at Unit 3301, Swiss Tower, Plot No: JLT-PH2-Y3A, Jumeirah Lakes Towers, Dubai, United Arab Emirates. The Licensing Entity and Company referenced in this Section 12.7, agree that these Terms of Service, the performance of the Parties hereunder, and all disputes arising out of or related hereto will be governed by and construed solely in accordance with the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts. Each of the Parties represents to the other Party and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens* in such courts.

**12.8 Asia Pacific; Israel:** If Company is located (as evidenced by the Certificate) in **Australia, New Zealand, India, Malaysia, the Philippines, or Thailand**, the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro Australia Pty Limited, Level 15, 1 Pacific Highway, North Sydney, New South Wales, 2060, Australia. If Company is located (as evidenced by the Certificate) in **Singapore, Vietnam or Indonesia**, the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro Singapore Pte Ltd., 6 Temasek Boulevard #16-01 Suntec Tower Four, Singapore. If Company is located (as evidenced by the Certificate) in **Taiwan, Republic of Korea, Hong Kong SAR, Macau SAR or Israel**, the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro Inc., 8F, No.198, Tun-Hwa S. Road, Sec. 2, Taipei 106, Taiwan, Republic of China. If Company is located (as evidenced by the Certificate) in the **Peoples Republic of China**, the Licensing Entity of Cloud Services in all instances is stipulated as: Trend Micro (China) Inc., R23, 14F, No.800 Shangcheng Rd., Pudong District, Shanghai, China 20020.

**.1** If Company is located (as evidenced by the Certificate) in **Australia or New Zealand**, these Terms of Service are governed by the laws of New South Wales, Australia. The Parties agree that the courts located in New South Wales shall have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

Notwithstanding anything contained in Sections 2.3 and 7 of these Terms of Service, if the Australian Competition and Consumer Act 2010 is applicable to the instant transaction (and not otherwise subject to an effective exclusion or waiver under Sections 2.3 and 7) and Trend Micro is in breach of a guarantee implied by such Act, Trend Micro's liability is limited to the repair or replacement of goods/software or the supply of equivalent goods/software, or the payment of the cost of replacing the goods/software or having the good/software repaired where reasonable. Where a guarantee relates to the right to sell, quiet possession, or clear title of a good/software under schedule 2 of the Competition and Consumer Act, then none of these limitations apply.

**.2** If Company is located (as evidenced by the Certificate) in **Hong Kong SAR or Macau SAR**, these Terms of Service are governed by the laws of Hong Kong SAR. The Parties agree that the courts located in Hong Kong SAR shall have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**.3** If Company is located (as evidenced by the Certificate) in **Taiwan**, these Terms of Service are governed by the laws of Taiwan, without regard to its principles of conflicts of law. The Parties agree that the courts located in Taiwan shall have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**.4** If Company is located (as evidenced by the Certificate) in **the Republic of Korea**, these Terms of Service are governed by the laws of the Republic of Korea. The Parties agree that the courts located in the Seoul Central District Court of the Republic of Korea shall have exclusive jurisdiction over all disputes arising out of or relating to these Terms of Service or its subject matter.

**.5** If Company is located (as evidenced by the Certificate) in **Israel**, these Terms of Service are governed by the laws of England and Wales. The Parties irrevocably consent and agree to the sole and exclusive *in personam* jurisdiction of the courts sitting in England with respect to any dispute that cannot be resolved by the Parties and all proceedings with respect thereto shall be litigated and determined solely and exclusively in such courts.

**.6** If Company is located (as evidenced by the Certificate) in **Singapore, India, Indonesia, Malaysia, the Philippines, Vietnam, or Thailand**, these Terms of Service and the agreement to arbitrate is governed by the laws of Singapore, without regard to its principles of conflicts of law. The following **Irrevocable Mandatory Agreement to Arbitrate** with respect to matters set forth in and governed by this Section 12.8.5 (only) is hereby irrevocably agreed by the Parties:

a. The Parties irrevocably agree that each controversy, dispute, or claim in any way arising from, pertaining to, or in connection with these Terms of Service, any Cloud Services, or the performance/non-performance of both or either Party (each a "**Dispute**") will be solely and exclusively resolved by mandatory and binding arbitration that is administered by Singapore International Arbitration Center ("**SIAC**") which will be held and conducted in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("**SIAC Rules**") on the Publication Date. The arbitration award will be final and binding for the Parties without appeal and

will be in writing and set forth the findings of fact and the conclusions of law. In arriving at their award, the arbitrators shall make every effort to find a solution to the Dispute in the language of these Terms of Service and shall give full effect to all provisions hereof. However, if a solution cannot be found in the language of these Terms of Service, the arbitrators shall exclusively apply the substantive law of Singapore existing on the Publication Date hereof and are specifically divested by the Parties of any power or authority to: (i) apply any principles that would permit them to ignore these Terms of Service, or (ii) apply the law of any jurisdiction other than Singapore.

b. The number of impartial arbitrators will be three (3), with each Party being entitled to appoint one arbitrator. The two (2) arbitrators appointed by the Parties will appoint a third arbitrator (who must be a lawyer with a multinational law firm and have a minimum of ten (10) years of experience in the field of computer software development, licensing, and distribution) who will act as chairman of the proceedings, or if no agreement is reached by such arbitrators within twenty (20) days of the last to be appointed, then the post of chairman will be filled by the president of SIAC at the request of either Party. Vacancies in the post of chairman will be filled by the president of SIAC in accordance with the SIAC Rules. Other vacancies will be filled by the respective nominating Party. Proceedings will continue from the stage they were at when the vacancy occurred.

c. If one of the Parties refuses or otherwise fails to appoint an arbitrator within thirty (30) days of the date the other Party appoints its arbitrator, the Parties irrevocably agree that the first appointed arbitrator will be the sole arbitrator, provided that such arbitrator was validly and properly appointed in accordance with the SIAC Rules unless such sole arbitrator appointment shall be void or voidable under SIAC Rules, in which event a sole arbitrator having the qualifications of the chairman will be appointed by the president of SIAC in accordance with the SIAC Rules.

d. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of these Terms of Service prevails over any other language version.

**.7** If Company is located (as evidenced by the Certificate) in the **People's Republic of China**, these Terms of Service are governed by the laws of China, without regard to its principles of conflicts of law. The following **Irrevocable Mandatory Agreement to Arbitrate** with respect to matters set forth in and governed by this Section 12.8.6 (only) is hereby irrevocably agreed by the Parties:

a. The Parties irrevocably agree that each Dispute arising from or related to these Terms of Service, any Cloud Services, or the performance/non-performance of both or either Party will be finally settled by arbitration that is administered by Beijing Arbitration Commission (“BAC”) which will be held and conducted in Beijing in accordance with the Arbitration Rules of Beijing Arbitration Commission (“BAC Rules”) on the Publication Date. The arbitration award will be final and binding for the Parties without appeal and will be in writing and set forth the findings of fact and the conclusions of law.

b. The number of arbitrators will be three (3), with each Party being entitled to select one arbitrator or authorize the chairman of the BAC to appoint one arbitrator. The third arbitrator shall be selected jointly by the Parties or nominated by the chairman of the BAC in accordance with a joint mandate given by the Parties. The third arbitrator shall be the presiding arbitrator.

c. All proceedings will be conducted, including all documents presented in such proceedings, in the Simplified Chinese language. The Simplified Chinese language version of these Terms of Service prevails over any other language version.

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

**12.10 Provisional Remedies; No Waiver.** Notwithstanding the Parties agreement to arbitrate in Sections 12.8.5 or 12.8.6 as the case may be, a Party may apply at any time to any court or courts having jurisdiction over the relevant Party or Parties for an order (that is NOT dispositive or final of any Dispute), including, but not limited to, an *ex parte* temporary restraining order, temporary injunction proceedings, or other provisional or interim/ancillary remedies or equitable relief (each a “**Temporary Action**”) seeking protection: (1) of its Confidential Information provided hereunder as described in Section 6; or (2) from a breach of or non-compliance with any Cloud Service grant in Section 2 of these Terms of Service or from infringement, misappropriation, or a violation of such applying Party’s intellectual property rights forming a part of any Cloud Service or otherwise, including any and all rights protectable under intellectual property laws anywhere in the world such as (by way of example) patent, copyright, trade secret, and trademark law; *provided, however*, no such Temporary Action shall be a final disposition of any matter to be submitted to arbitration nor it shall compromise, limit, or avoid the sole and exclusive right of the arbitrators to decide and finally dispose of all Disputes subject to arbitration hereunder, including, without limitation, granting temporary or permanent relief of the subject of any request for Temporary Action. The institution and maintenance of a Temporary Action shall not be deemed an election of remedies or constitute a waiver or abrogation (in whole or in part) of the agreed right and obligation of each Party, including the plaintiff in any arbitration or Temporary Action, to submit each and every Dispute to arbitration, nor supersede or render inapplicable (all or in part) the agreed compulsory arbitration provisions of these Terms of Service.