



**GLOBAL TERMS OF USE FOR TREND MICRO CLOUD PRODUCTS
AVAILABLE ON AWS MARKETPLACE TO AWS ACCOUNT HOLDERS
(these “Terms of Use”)**

IMPORTANT: READ CAREFULLY. THE LICENSE TO ACCESS AND USE ALL OR A PORTION OF TREND CLOUD PRODUCTS BY BUSINESS, GOVERNMENTAL, AND OTHER LEGAL ENTITIES IS SUBJECT TO AND CONDITIONED ON ACCEPTANCE OF, AND AGREEMENT TO, THESE TERMS OF USE. TREND CLOUD PRODUCTS ARE NOT AVAILABLE HEREUNDER FOR PERSONAL USE, HOME USE, AND/OR CONSUMER USE BY ANY PERSON. 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.

Evaluation and Paid Use: Trend Cloud Products (including infrastructure/platform provided by Trend Micro as part of each SaaS Product) made available by Trend Micro from time-to-time on the AWS Marketplace to AWS Account holders that are Entities.

Publication Date: 15 May 2022. These Terms of Use shall govern and control each procurement of Trend Cloud Products hereunder occurring on or after the Publication Date until the publication date of a superseding version of these Terms of Use (or substitute document therefor).

COMPANY IS ORDERING OR HAS ORDERED TREND CLOUD PRODUCT(S) THROUGH COMPANY’S AWS ACCOUNT AND COMPANY UNDERSTANDS AND ACCEPTS THAT COMPANY’S AGREEMENT TO THESE TERMS OF USE IS A PREREQUISITE TO AND A CONDITION OF SUCH ORDER. BY COMPANY: (1) ORDERING FROM THE AWS MARKETPLACE; (2) CAUSING TREND MICRO TO REGISTER, PROVISION, OR DEPLOY; AND/OR (3) ACCESSING OR USING, A TREND CLOUD PRODUCT, COMPANY HEREBY AGREES THAT ANY SUCH ACTION CONSTITUTES:

- a. COMPANY’S ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THESE TERMS OF USE,
- b. COMPANY’S ACCEPTANCE AND AGREEMENT TO THESE TERMS OF USE FOR THE PROVIDED TREND CLOUD PRODUCTS,
- 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 USE, 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 USE.

COMPANY AGREES THAT WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THESE TERMS OF USE. AGREED DEFINITIONS USED IN THESE TERMS OF USE ARE IN SECTION 1.2 BELOW.

1. Overview; Agreed Definitions.

1.1 Overview.

1.1.1 Application of These Terms of Use.

(a) **All Trend Cloud Products Offered on the AWS Marketplace.** Subject always to suspension and/or termination in accordance herewith, these Terms of Use that have been accepted and agreed by Company are applicable only to a Trend Cloud Product for such time that such Trend Cloud Product is subject to an outstanding Order that Company has issued to, and that has been accepted by Trend Micro, or AWS acting on behalf of and for the benefit of Trend Micro, but only for such time as Company has an active AWS Account.

(b) **BYOL.** Any BYOL offer on the Listing Page is NOT subject these Terms of Use, but rather, remains subject to the currently-active end user license agreement (or an electronically or manually-executed license agreement) between Company and Trend Micro for the original binary code version of the software secured through Trend Micro (directly or through its channel). Trend Micro makes no additional charge for such BYOL deployment (but AWS does separately charge Company for usage of its AWS Service with respect to such BYOL deployment), *provided, however*, Company must continue to procure and pay for annual maintenance under the then-active original end user license agreement. Trend will continue to provide (and AWS will not) to Company paid annual maintenance in accordance with the end user license agreement.

(c) **PSP; Tech Services SOW.** Premium Support Program (“PSP”) services and agreements are NOT subject to these Terms of Use even though they may be offered on the AWS Marketplace. Note that PSP services are provided under separate regional service agreements, and not under a single, global agreement. Likewise, Company-specific Tech Services SOWs are not provided under these Terms of Use, but rather, are provided pursuant to a unique statement of work and for such compensation that may be agreed by the parties thereto.

1.1.2 Entire Agreement. Company and Trend Micro agree that these Terms of Use (including the Data Processing Addendum that forms a part hereof and sets forth certain of the responsibilities of the Parties with respect to, among other things, European Personal Data) are the final, complete, and exclusive statement of the agreement between the Parties with respect to access to and use of each Trend Cloud Product secured by Company under an Order, and any prior agreements, representations, statements, white papers, or advertisement of Trend Micro (whether

oral, written, or on Trend Micro's 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 Use with respect to the subject matter hereof, are each and all merged into and superseded by these Terms of Use. Trend Micro will not be bound by, and Trend Micro specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of these Terms of Use (whether or not it would materially alter these Terms of Use) and which is submitted by Company in any RFP, Order, service requirement, confirmation, correspondence, or other document. **In entering into these Terms of Use, each Party represents and warrants to the other Party that it is NOT relying on any extrinsic representation, warranty, guarantee, covenant, condition, 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 Use.**

1.1.3 Not a Master Purchase Agreement. Company acknowledges that this is NOT a master purchase agreement for subsequent purchases of Trend Cloud Products, but rather, these Terms of Use only apply to each Order of a Trend Cloud Product by Company on the AWS Marketplace on or after the Publication Date. Each subsequent Order of a Trend Cloud Product placed by Company on the AWS Marketplace will be made subject to and conditioned on the Parties accepting the then-current version of these Terms of Use with effect from and after the Certificate date until the license therefor has expired or is terminated in accordance with the Terms of Use unless otherwise agreed in an amendment signed by the Parties.

1.1.4 AWS Not a Party. Company agrees that it is herein licensing the right to access and use one or more Trend Cloud Product(s) from Trend Micro pursuant to these Terms of Use. As a supplier to Trend Micro, AWS is acting solely as an agent and/or provider of payment/Tax processing and other related services in order to facilitate the purchase by Company on the AWS Marketplace of the right to access and use such Trend Cloud Product(s) agreed hereunder and for no other purpose. The Parties agree that payment to AWS acting on behalf of Trend Micro shall be deemed to be payment to Trend Micro for all purposes. For the avoidance of doubt, AWS (and not Trend Micro) is responsible for any AWS Services or other AWS or third party products/services that Company purchases from AWS, including, without limitation, Company's obligation to separately procure any or all necessary AWS Service in connection with any Application Software that may be provided hereunder.

1.2 Agreed Definitions. In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in these Terms of Use (including all policies, procedures, documents, and Trend Micro websites that are specifically referenced and incorporated herein), the initially capitalized definitions, descriptions, and clarifications 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.

"Acceptable Use Policy" or "AUP" shall have the meaning set forth in [Section 2.2](#).

"Administrator" means one or more Company employees with authorization to manage each Trend Cloud Product on behalf of Company. Each Administrator will have the ability to, among other things, configure, maintain, determine/set rules and policies for, assist Trend Micro in delivery of, view alerts and events generated by, and/or provide technical support for, each Trend Cloud Product as determined by Company from time-to-time at its sole discretion.

"Affiliate" means any Entity that Controls, is Controlled by, or is under common Control with, a Party to these Terms of Use, but only for as long as such ownership relationship continues to exist. "Control" and its derivatives means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of at least fifty percent (50%) of the aggregate of all voting equity interests in an Entity; (b) the sole right to direct all of an Entity's affairs; and/or (c) the absolute right to control the composition of an Entity's board of directors or equivalent management/policy body. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

"Applicable Law" means all mandatory national, federal, provincial, state, municipal, and local law, statute, act, ordinances, regulation, rule, code, treaty, executive order, supervisory requirement, official directive, circular, opinion, interpretive letters, and any other official release applicable from time-to-time to a Party's performance of its obligations and/or exercise of its rights hereunder, including, without limitation, data protection and security/personal privacy laws; corrupt activities/illegal payment laws; economic/trade sanctions laws, rules, and regulations; and export/import laws, rules, and regulations.

"Application Software" means an on-premise version of a Trend Micro application software program that has been configured, tested, and then deployed as an Amazon Machine Image (AMI) on the AWS Marketplace by Trend Micro and offered as a cloud service on the Listing Page, but for the avoidance of doubt, such Application Software does NOT include any platform/infrastructure services that must be separately purchased by Company from AWS through its AWS Account. Application Software is typically offered with usage-based consumption pricing that is billed to the customer monthly in arrears, but may be available by Subscription in some instances.

"AWS" means Amazon Web Services, Inc.

"AWS Account" means Company's active account on the AWS Marketplace.

"AWS Marketplace" means the software/service marketplace operated by AWS located at <https://aws.amazon.com/marketplace>, as may be updated from time-to-time by AWS.

"AWS Service" means any and all cloud computing platform/infrastructure/hosting service then-offered by AWS to AWS Account holders.

"AWS Terms and Policies" means all of the AWS Marketplace agreements, terms, conditions, restrictions, and policies that may be applicable to Company in connection with its use of the AWS Marketplace that may affect or impact Company's access to and use of any Trend Cloud Product.

"BYOL" or "Bring-Your-Own-License" means, if offered on the Listing Page, a binary-code version of a Trend Micro software that is then-licensed to and deployed by Company on its owned or leased devices that is subject to an active Trend Micro end user license agreement between Company and Trend Micro that Company may elect to uninstall and exchange for an Amazon Machine Image (AMI) version of that software for deployment with Company's AWS (and hybrid) workloads.

“**Certificate**” means a written (electronic or otherwise) acceptance/entitlement confirmation issued by Trend Micro (or AWS acting on behalf of Trend Micro) that confirms the Trend Cloud Product(s) purchased by Company hereunder, including the Effective Date and the Usage Metric and/or Subscription Term where applicable. The Certificate and these Terms of Use forms the entire agreement between Trend Micro and Company with respect to each Trend Cloud Product purchased hereunder. The Certificate is in lieu of and supersedes any RFP, quote, and Order form. Company is advised to retain the Certificate as proof of its entitlement to such Trend Cloud Product(s). In some regions covered hereby, the Certificate is sometimes referred to as a License Certificate, an Entitlement Certificate, or an Order Acceptance.

“**Company**” refers to a business/government entity that: (a) has and maintains an active AWS Account and has Ordered one or more Trend Cloud Products through such AWS account; (b) has agreed to these Terms of Use with respect to such Trend Cloud Product(s); and (c) accesses, uses, and/or receives the benefit of such Trend Cloud Products.

“**Company’s Configuration**” shall have the meaning set forth in Section 4.2.2.

“**Company Data**” means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to the Trend Cloud Product 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 Trend Cloud Products or Support Services, in each case including aggregated data and any information (such as logs) derived or generated in whole or in part from any such data and information. Company Data does not include Cyberthreat Data.

“**Confidential Information**” shall have the meaning set forth in Section 6.1.

“**Controlled Technology**” shall have the meaning set forth in Section 10.4.

“**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 IP addresses, malicious domains and URLs, DNS data, network telemetry, commands, executable binary files, macros, scripts, processes or techniques, metadata, or other information or data directly or indirectly associated with any of the foregoing, that may be related to unauthorized, unwanted, and/or harmful intrusions or attacks by any person associated therewith and that: (a) Company provides or makes available to Trend Micro in connection with a Trend Cloud Product; or (b) is accessed, collected, or discovered by Trend Micro during the course of providing a Trend Cloud Product, excluding only the portion of such information or data to the extent it identifies Company or is Personal Data. Cyberthreat Data is not Company Data or Company Confidential Information.

“**Data Processing Addendum**” or “**Addendum**” means Trend Micro’s Data Processing Addendum (at trendmicro.com/dpa or as may be requested by Company from legal_notice@trendmicro.com) that is applicable if and to the extent Trend Micro acts as a ‘Processor’ or ‘Sub-Processor’ (as each term is defined therein) for Company of Personal Data. The Parties agree that the Data Processing Addendum is 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.

“**Data Subject**” means an identified or identifiable natural person whose Personal Data is Processed by Trend Micro in connection with these Terms of Use.

“**Effective Date**” means for each license of Trend Cloud Products granted by Trend Micro to Company hereunder, the effective date is set forth in the applicable Certificate.

“**End User**” means any Entity and human being (directly or indirectly through another End User) that: (a) accesses or uses a Trend Cloud Product for Company’s benefit in accordance with these Terms of Use such as Company’s Administrator(s), technical/support resources, or human being that access and uses any Company device; or (b) otherwise accesses or uses a Trend Cloud Product licensed hereunder to Company such as an Affiliate or Contractor.

“**Entity**” means any: (a) corporation; (b) partnership (general, limited, or any other form available under local Applicable Law); (c) joint venture; (d) trust; (e) limited liability company; (f) association; or (g) governmental entity (any domestic or foreign national, state or local government, any subdivision, agency, board, commission, bureau, court, tribunal, department, or other instrumentality or authority thereof), but for the avoidance of future doubt, the term does not include individual human beings.

“**European Personal Data Protection Law**” means: (a) Regulation 2016/679 (General Data Protection Regulation) (the “**EU GDPR**”); (b) the EU e-Privacy Directive (Directive 2002/58/EC); (c) the EU GDPR as it is saved and incorporated into UK law by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the “**UK GDPR**”); (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003 as they continue to apply in the UK under section 2 of the European Union (Withdrawal) Act 2018; and (e) any and all applicable national Personal Data Protection Laws made under, pursuant, supplemental to or in order to give effect to (a) – (d); in each case as may be amended or superseded from time to time. The following terms shall have the meanings given to them in European Personal Data Protection Laws: “Controller”, “Data Protection Impact Assessment”, “Data Subject”, “Process”, “Processed”, “Processing”, “Processor” when the GDPR applies to Personal Data.

“**European Personal Data**” shall mean Personal Data if and only to the extent that European Personal Data Protection Law applies to Trend Micro with respect to its Processing of such Personal Data.

“**Evaluation**” shall have the meaning set forth in Section 2.5.

“**Evaluation Service**” shall have the meaning set forth in Section 2.5.

“**Excused Performance Events**” means any event, condition, and/or circumstance beyond a Party’s reasonable control that was unavoidable even if foreseeable, including, without limitation: acts of God (such as earthquakes, hurricanes/typhoons, tornados, windstorms, snow/ice storms, fires, pandemics, or floods); declared or undeclared war; armed conflict or intrusion; acts of terrorism; sabotage or arson; criminal actions; actions or orders of civil authorities or governments (*e.g.*, economic sanctions) under any Applicable Law; cyber-attacks of any kind such

as network intrusions, “zero day” threats or attacks, as well as private, criminal, or state-actor hacking, denial-of-service attacks, ransomware, or other malicious actions; telecom/internet congestion, slowdown or outage; computer, networks, or systems failures or delays involving hardware, software, or services not within a Party’s possession, control and responsibility; labor strike or work stoppages; or an embargo, boycott, and/or sanction (such as export/import restrictions) under an Applicable Law.

“**Excluded Damages**” means any and all claims, causes of action, losses, compensation, reimbursement, expenses, or damages of a Party arising from or related to any: (a) assertions or claims of Company that a Trend Cloud Product did not protect Company and/or its Affiliates or its cloud services, systems, network, servers, end points, or devices from and against all security probes/attacks/breaches, malicious intrusions, Cyberthreat Data, or any other criminal threats or attacks by any person (including state-sponsored actors); (b) errors or vulnerabilities in a Trend Cloud Product; (c) suspension or termination of these Terms of Use or use of, or access to, a Trend Cloud Product as permitted in these Terms of Use (including the AUP); (d) discontinuation of, or modification to, any or all Trend Cloud Products or Support Services in accordance herewith; (e) unauthorized access to, alteration of, or the deletion, destruction, corruption, damage, loss, of any Company Data and/or the restoration thereof; (f) a Party’s lost or anticipated business revenue or profits, procurement of substitute services, loss of business opportunity or failure to realize expected savings, reduction in reputation or goodwill, or loss of any use of any of networks, systems, software, hardware, computers, or devices; (g) loss of use or other downtime of all or a portion of a Trend Cloud Product (including any AWS Service) for any reason, including as a result of power outages, system failures, internet failures, or other denial of access to or interruption of such Trend Cloud Product; (h) third party claim against a Party’s and/or any of its Affiliates arising from or related hereto; or (i) for any incidental, punitive, exemplary, indirect, special, or consequential damages.

“**Fees**” means the fees payable by a customer for its access to and use of a Trend Cloud Product as set forth on the Listing Page or in a private offer. Except as may be set forth in a separate written private offer, Fees for each Trend Cloud Product will be determined as follows: (a) AWS will bill customer for a usage-based consumption listing, the aggregate number of units of the applicable Usage Metric consumed in a calendar month by customer at or after the end of such calendar month; (b) AWS will bill customer in full for a Subscription listing at the commencement of the applicable Subscription Term; and (c) if the listing is a combination of (a) and (b), then AWS will bill the customer accordingly.

“**GDPR**” means EU GDPR and/or the UK GDPR, as applicable.

“**Global Privacy Notice**” means Trend Micro’s Global Privacy Notice published from time-to-time at https://www.trendmicro.com/en_us/about/trust-center/privacy/notice.html or as may be requested by Company from 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 where the unavailability, inaccuracy, circumvention, ineffectiveness, or limitations of a Trend Cloud Product could lead or contribute (directly or indirectly) to damage to, or loss or destruction of: real/immovable property; personal/movable property; personal or bodily injury to, sickness, disease or death of any human being; and/or any contamination of, adverse effect on, or damage to the environment. High-Risk Environments 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, automobiles (autonomous or otherwise), and other modes of transportation; (c) traffic control systems, including those related to aircraft, shipping, or ground transportation; (d) weapons systems (nuclear or otherwise); and/or (e) operation of life-support or life-critical medical equipment or other equipment or systems affecting a patient’s health or well-being.

“**HIPAA**” shall have the meaning set forth in [Section 4.5](#).

“**Internal Business Use**” means the internal business access and use of a Trend Cloud Product solely by and for the direct benefit of Company (as it may determine) specifically in connection with the security, protection, and/or integrity of Company’s systems, networks, devices, documents, emails, and/or Company Data.

“**IP Claim**” means any suit, cause of action, or other legal proceeding filed/brought against Company by a third party (that is not an Affiliate of Company) in the courts of law, equity, or otherwise alleging or asserting that Company’s use of a Trend Cloud Product (or component parts thereof, but not Open Source Software or an Evaluation Service) provided hereunder directly infringes any patent or copyright of such third party, or makes unlawful use of a trade secret of such third party. In addition, the term IP Claim will not include, and Trend Micro will have no obligation under [Section 9](#) 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 a Trend Cloud Product by Company that is NOT in accordance with these Terms of Use, its User Documentation, or Applicable Laws; (b) any modification or programming to a Trend Cloud Product (including components thereof) not made by Trend Micro; (c) Company Data and/or other materials that Company provides or makes available in connection with its use of a Trend Cloud Product; (d) any redistribution of a Trend Cloud Product, or use of a Trend Cloud Product for the benefit of any third party not specifically permitted herein; (e) any use of a Trend Cloud Product by Company after Trend Micro’s notice to cease use of a Trend Cloud Product under [Section 9.2](#); (f) Evaluation Service access and/or use; or (g) any third party allegation or assertion made against a Trend Cloud Product (or any output thereof) that involves use of a Trend Cloud Product in combination with any other software, cloud service, business process, or technology offered by AWS or any third party.

“**Listing Page**” means the listings of each Trend Micro SaaS Product, Application Software, BYOL, and other offerings published by Trend Micro on the AWS Marketplace from time-to-time setting forth such details as general product description, Usage Metric, and Fees.

“**Open Source Software**” or “**OSS**” 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 license (and not licensed/distributed under these Terms of Use); and (b) is distributed to Company in a Trend Cloud Product (including any Service Component) by Trend; 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 Trend Cloud Product that require Trend Micro to process certain Company Data (some of which may be Personal Data) that Company may elect (at its sole discretion) to opt-in (and/or adjust to meet Company’s requirements) or opt-out of the use thereof only if and to the extent a right to adjust, opt-in, or opt-out is described in and permitted by its User Documentation. For example, such Optional Features if active, may permit a Trend Cloud Product to among other things: (a) provide the defined capabilities, features, and functionality thereof as described in the User Documentation, the Global Privacy Notice, and/or in [Section 4.2.2](#); 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**” refers to the AWS ordering documentation (including a registration webpage, if applicable), pursuant to which Company obtains limited access to and use of a Trend Cloud Product through the AWS Marketplace if and when accepted by AWS acting for and on behalf of Trend Micro as evidenced in a Certificate.

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

“**Party**” means only each of Company and Trend Micro, and together, they are collectively the only “**Parties**.” All other persons, including Affiliates of each Party, 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 that is made available or supplied by Company to Trend Micro pursuant to these Terms of Use and any Personal Data generated or derived in relation to such Personal Data such as logs, but only if and to the extent such data elements are regulated, protected, restricted, or controlled under applicable Personal Data Protection Laws.

“**Personal Data Protection Law**” means any country/regional (including, national, state/provincial, and local) enacted law that is primarily applicable to a Party’s Processing of Personal Data under these Terms of Use, as may be enacted, amended, or superseded from time-to-time.

“**Process**” or “**Processing**” means any operation or set of operations that are performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“**PSP**” shall have the meaning set forth in [Section 1.1.1\(c\)](#).

“**SaaS Product**” means (a) one or more Trend Micro owned or licensed cloud-based software application(s); that is (b) deployed and hosted by Trend Micro on the AWS Service infrastructure (on Trend Micro’ AWS Account); and (c) any Service Component (if any) and other technology that may be provided or made accessible by Trend Micro that Company is required, or has the option, to deploy in order to access and use the SaaS Product. A SaaS Product may also include Trend Micro managed services.

“**Service Component**” means certain binary code software (such as agent, client, application software, management console, functionality, and/or tool) and/or a hardware peripheral (if any) that is to be installed by Company on its device(s) and/or environment(s) that enables and/or facilitates optimal access to and use of a Trend Cloud Product that may be provided hereunder. Each Service Component is licensed as a component of the Trend Cloud Product that it forms a part of. Service Component may or may not be identified in the User Documentation.

“**Subscription**” means a fixed-term license that is offered on the Listing Page that may be purchased by a customer for the listed Fees and such Usage Metric as evidenced in a Certificate to access and use a Trend Micro Product (either of a SaaS Product or AMI/Application Software) during the Subscription Term, subject always to these Terms of Use. A Subscription Term is non-cancellable or subject to proration except in the limited instances specifically set forth herein.

“**Subscription Term**” means the fixed period of time (one month, one year, two years, or three years only if offered by Trend Micro on the Listing Page or in a private offer) for which a customer has purchased a Subscription to access and use a Trend Cloud Product.

“**Support Services**” are described in [Section 5.1](#) and are provided with each Trend Cloud Product without additional charge.

“**Tech Services SOW**” means a statement of work for a one-of-a-kind technical services (that take into consideration the environment and needs of a customer) engagement that may be entered into with Trend Micro by a customer. Any such Tech Services SOW will NOT be provided under or subject to these Terms of Use

“**Term**” is described in [Section 8.1](#).

“**Trend Cloud Products**” means each and every: (a) SaaS Product; and (b) Application Software offered by Trend Micro on its Listing Page on the AWS Marketplace from time-to-time; *provided, however*, the term never includes BYOL products, PSP services, or a Tech Services SOW. The term Trend Cloud Product also includes any User Documentation related to a Trend Cloud Product and Service Components (if any) forming a part thereof, as well as any and all updates, upgrades, new versions, or releases of a Trend Cloud Product, that Trend Micro may elect to make available to customers of such Trend Cloud Product, but the term Trend Cloud Product does not include any AWS Service or any other AWS or third party product/service separately offered/sold to AWS Account holders by AWS or third parties.

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

“**Trend Micro**” means Trend Micro Incorporated, a California (USA) corporation.

“**Usage Metric**” means Trend Micro’s measurement of entitlement published (publically or privately) on the AWS Marketplace by Trend Micro for determining the permitted use and/or length of use as well as calculating the Fees due for each Trend Cloud Product. Usage Metrics may be defined as, among other things, a per host hour, number of users and/or device nodes, container, throughput volume, bandwidth (GB, MB, TB), VMs, instances, or other measure(s), and/or other metering mechanism specified by Trend Micro on its Listing Page for a Trend Cloud Product.

“**User Documentation**” means the printed, electronic, and/or online Administrator/End User operating instructions, descriptions, and requirements generally made available by Trend Micro for each Trend Cloud Product (and Service Component, if any) for the purpose of supporting Company’s Internal Business Use of a Trend Cloud Product, but for the avoidance of doubt, User Documentation does not include any Trend Micro marketing materials, whether online, electronic, or paper. The User Documentation is incorporated herein and made a part hereof for all purposes as a part of the designated Trend Cloud Product; *provided, however*, Company understands and agrees that the published User Documentation may be revised from time-to-time by Trend Micro at its discretion as, for among other reasons, changes or improvements to, or new versions of, a Trend Cloud Product as described in [Section 2.7](#) without the need to amend these Terms of Use.

2. Grant for Trend Cloud Products and Applicable Conditions, Limitations, Reservations, and Exclusions.

2.1 Grant; Limitations/Conditions.

2.1.1 License Grant of Access to and Use of Trend Cloud Product(s). On the terms and subject to Company’s continuous compliance (including Company’s compliance with [Sections 2.1 and 2.2](#)) with all of the obligations, conditions (including, without limitation, making timely payment in accordance with applicable payment terms), exclusions, and restrictions set forth in these Terms of Use and the terms and conditions of any applicable AWS Terms and Policies only to the extent applicable to Company in connection with its access to and use of any Trend Cloud Product, Trend Micro grants only to Company, a non-exclusive, non-transferable, non-sublicensable, non-assignable (in whole or in part), and revocable/terminable (in accordance herewith or Applicable Law), worldwide (as may be limited by Applicable Laws) right and license to access and use a Trend Cloud Product purchased hereunder in accordance with its User Documentation only for Company’s Internal Business Use for such time and only for the Usage Metric as purchased (as evidenced by Certificate) and paid for by Company until the expiration or termination of the foregoing license in accordance herewith or Company’s AWS Account is terminated, whichever shall first occur. For the avoidance of doubt, these Terms of Use do not grant Company any right to request or receive a binary code or source code copy of a Trend Cloud Product except for any Service Component in binary code form that may form a part thereof. Company may make a reasonable number of copies (typically no more than three) of any binary code software Service Component for back-up, archival, and disaster recovery purposes.

2.1.2 Limitations/Conditions. Except as may be specifically licensed hereunder to Company in this Section 2.1, Company agrees that it is not licensed or authorized hereunder to and as a condition hereunder, Company agrees that it will not (or otherwise cause or permit third parties to): (a) modify, adapt, copy (except as permitted herein with respect to Service Component), mirror, frame, publicly display, republish, translate, disassemble, decompile, or reverse engineer a Trend Cloud Product, or otherwise attempt to derive the source code of, decrypt, modify, or create derivative works of, a Trend Cloud Product or otherwise circumvent its functions, or attempt to gain unauthorized access to a Trend Cloud Product or its related systems or networks; (b) use any Trend Cloud Product: (i) as a paid or unpaid service bureau/time-sharing basis or to otherwise provide outsourcing/managed services, commercial hosting, application service provider, or to otherwise provide services directly or indirectly to third parties (such as business process outsourcing); or (ii) otherwise commercially exploit or make any Trend Cloud Product available to any third party except as specifically permitted in [Section 2.9](#); (c) access, evaluate, observe, or use a Trend Cloud Product (or any component thereof) to build or support (or assist a third party in building or supporting) the improvement and/or creation of products or services competitive to such Trend Cloud Product or Trend Micro, or copy any ideas, features, functions, organization, structure, graphics, or user interface of Trend Cloud Product for any reason; (d) license, sublicense, sell, resell, loan, rent, lease, transfer, assign (in whole or in part), or distribute Trend Cloud Product to any third party; (e) without the prior express written permission of Trend Micro which permission may be withheld or conditioned at the sole discretion of Trend Micro, conduct (by Company or through any third party) any stress, penetration, or vulnerability testing or analysis of any kind or nature on any Trend Cloud Product or its environment; (f) except and to the extent permitted in [Section 2.5](#) in connection with an Evaluation, undertake or conduct any benchmark tests, or performance/competitive analysis relating to Trend Cloud Product without the prior written approval of Trend Micro specifically amending this subpart (f); or (g) attempt to do any of the foregoing.

2.2 Acceptable Use Policy.

2.2.1 Acceptable Use Policy. This Acceptable Use Policy (this “**Acceptable Use Policy**” or “**AUP**”) describes prohibited uses of Trend Cloud Products by Company and any third party permitted by Company to access and/or use a Trend Cloud Product. The Parties agree that Trend Micro may modify this AUP at any time by posting a revised version on the Trend Micro website at <https://www.trendmicro.com/eula> and by continuing to access and use a Trend Cloud Product, Company agrees to the latest version of this Acceptable Use Policy. In light of the foregoing, Company may not and agrees that it will not, nor will Company authorize or help or otherwise permit third parties to:

- (a) Disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Company’s use of any Trend Cloud Product or otherwise use such Trend Cloud Product in a way intended to avoid incurring fees or exceeding the Usage Metric limitations agreed to in an Order or otherwise attempt to gain unauthorized access to a Trend Cloud Product.
- (b) Access or use a Trend Cloud Product without permission in accordance herewith, including attempting to probe, scan, or test the vulnerability of the environment of a Trend Cloud Product or to breach any security or authentication measures used by or in any Trend Cloud Product.
- (c) Make network connections to any other customers, users, hosts, or networks unless Company has permission to communicate with each such person. Additional prohibited activities include: (i) monitoring or crawling of a Trend Cloud Product that impairs or disrupts the Trend Cloud Product being monitored or crawled; (ii) inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective; (iii) interfering with the proper functioning of a Trend Cloud Product or other cloud service, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques; (iv) operating network services like open proxies, open mail

- relays, or open recursive domain name servers; or (v) using manual or electronic means to avoid any use limitations placed on a Trend Cloud Product, such as access and storage restrictions.
- (d) Use a Trend Cloud Product: (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, disseminate, or otherwise make available content that is illegal, harmful, fraudulent, or offensive including generating or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, Ponzi/pyramid schemes, phishing, or pharming; (ii) in a manner that infringes or misappropriates the intellectual property rights of any third party or otherwise that breaches these Terms of Use and/or this AUP; (iii) interfere with the use of a Trend Cloud Product by any third party; or (iv) interfere with the proper functioning of the environment/infrastructure used to provide a Trend Cloud Product.
 - (e) Generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements, surveys, or other solicitations (e.g., "spam"), including commercial advertising and informational announcements.
 - (f) Access, evaluate, observe, or use, Trend Cloud Product (or any Service Component) 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 Trend Cloud Product (or any Service Component) for any reason.
 - (g) Access or use of a Trend Cloud Product in excess of the quantity and/or other Usage Metric that Company has Ordered as evidenced by the Certificate.

2.2.2 Remedial Actions. Any failure to comply with, or breach or violation of, this AUP shall be considered a material breach of these Terms of Use by Company. In addition to any other rights or remedies afforded to Trend Micro under these Term of Use (including, without limitation, under [Section 8.2](#)) or under any Applicable Law, Trend Micro reserves the right, but has no obligation, to monitor for and/or investigate suspected actions or content that are inconsistent with, or in violation of, this AUP, or use of a Trend Cloud Product not in accordance with this AUP. Trend Micro (at its discretion) will cooperate with Company in its efforts to remedy any non-compliance with or violation of this AUP. None of the foregoing actions taken shall be considered a breach of these Terms of Use by Trend Micro, nor shall Trend Micro have any liability to Company for damages or anything else in the event that Trend Micro takes any action permitted hereunder in good faith.

2.2.3 AWS AUP. Company acknowledges that AWS may have rights agreed with Company in the AWS Terms and Policies that are the same as or similar to those set forth in this Section with respect to any AWS Service provided directly or indirectly (such as through a SaaS Product) to Company that AWS may independently enforce directly against Company or it may require Trend Micro to do so.

2.3 Open Source Software. A Service Component may come bundled or otherwise be distributed with open source software (herein "**Open Source Software**"), that is subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each "**OSS Terms**") under which such Open Source Software is redistributed to Company by Trend Micro and NOT these Terms of Use. OSS Terms applicable to any Open Source Software redistributed in any Service Component provided hereunder will be identified by Trend Micro in the User Documentation for, and/or in a "Read Me" or an "About" file in, the Service Component. Nothing in this Section shall excuse Trend Micro from complying with its warranty obligations in [Section 7.1](#) with respect to any Trend Cloud Product. OPEN SOURCE SOFTWARE IS PROVIDED BY TREND MICRO "AS IS, WITH ALL FAULTS, AND AS AVAILABLE" WITHOUT (AND 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 USE, 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, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND 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.

2.4 Security Acknowledgement. Certain Trend Micro products are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or the performance and security of cloud services, computers, systems, and/or networks. While Trend Micro uses commercially reasonable efforts to properly identify applications and files for detection by its products/software, *however*, given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, Trend Micro cannot and does not warrant or guarantee that a Trend Cloud Product will detect, block, or completely remove or clean any or all applications, routines, and files that are Cyberthreat Data, 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 for example: (a) the design, proper configuration, implementation, and use of a number of hardware, software, and/or cloud security tools in a coordinated effort to manage present and future security threats; (b) the design, development, proper configuration, and implementation of cybersecurity protocols and controls, network and systems protections, as well as monitoring and detection processes applicable to the foregoing; (c) the selection, implementation, training, testing, and enforcement of appropriate internal security policies, procedures, and controls regarding access, security, encryption, use, and transmission of data; (d) the development and periodic testing of processes and procedures for the continuous backup (including offline and off-network storage) and recovery from failure, inoperability, or intrusion of any system, network, cloud service, software, database, and any stored data (including any Company Data); (e) conducting regular cybersecurity and privacy training for employees and periodic testing protocols; (f) development and documentation, education and training as well as, periodic testing, reevaluation, and improvement of, a robust security-breach incident and disaster recovery plan/program; (g) having adequate vendor risk management processes, policies, and controls; and (h) where applicable, diligently and promptly downloading and installing all updates to any Service Component as well as to all third party products and software that are made available to Company by any publisher, vendor, or manufacturer.

2.5 Evaluation of a Trend Cloud Product. If Company has Ordered or otherwise validly entitled to an evaluation, trial, proof of concept, preview, or test (each an "**Evaluation**") of a Trend Cloud Product (herein an "**Evaluation Service**"), then the provisions of this Section shall apply to such Evaluation. On the terms and subject to the conditions of these Terms of Use (but in lieu of [Section 2.1.1](#) only to the extent it is in conflict herewith), Company will have the license under [Section 2.1](#) (as modified under this Section) to conduct an Evaluation of the Evaluation Service utilizing only its full time employees for a period not to exceed thirty (30) days (unless otherwise agreed to in writing by Trend Micro or earlier terminated in accordance with [Section 8](#)), during which period Company may access and use the Evaluation Service

solely for Company's internal Evaluation in a test and research environment, to decide whether or not to procure hereunder, the full-rights version of the Trend Cloud Product being Evaluated. Company acknowledges that the Evaluation Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions, and/or data loss if the Evaluation is not properly conducted by Company at its sole determination and discretion. Company agrees it is a condition of the rights granted in this Section, that notwithstanding anything herein to the contrary, Company will not publish or otherwise provide or make available to any third party (for example, its Affiliates, Contractors, and technical advisors) all or any part of the content, results, benchmarking (against competitive products), and/or conclusions/recommendations drawn by Company in any Evaluation. Trend Micro does not charge a Fee for an Evaluation Service. Trend Micro has no obligation to provide any support for Evaluation Services, but Trend Micro may do so at its sole discretion. CONSEQUENTLY, EVALUATION SERVICES ARE PROVIDED TO COMPANY SOLELY ON AN "AS IS, AS AVAILABLE, AND WITH "ALL FAULTS" BASIS. TREND MICRO HEREBY EXCLUDES AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, CONDITIONS, UNDERTAKINGS, WARRANTIES, EXPENSES, AND/OR LIABILITIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) IN CONNECTION WITH ANY AND ALL EVALUATION SERVICES AND COMPANY ASSUMES ALL RISK (WHETHER KNOWN OR UNKNOWN) OF SUCH EVALUATION. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE LIABILITY OF TREND MICRO, ITS LICENSORS, RESELLERS, AND/OR SUPPLIERS FROM ALL CLAIMS AND CAUSES OF ACTION SHALL BE LIMITED TO THE SUM OF ONE HUNDRED DOLLARS (USD\$100.00) IN THE AGGREGATE. If Company accesses and/or uses a Trend Cloud Product after expiration of an Evaluation and such Evaluation Service is offered as a Trend Cloud Product on the Listing Page for compensation, Company agrees to pay for such Trend Cloud Product thereafter in accordance with Trend Micro's Fees published on the AWS Marketplace and the Parties agree that these Terms of Use shall apply to such paid use.

2.6 Ownership; Reservation of Rights. Each Trend Cloud Product offered hereunder, is and remains the exclusive property of Trend Micro and/or its licensors and/or suppliers. Except for Company's access and use rights expressly licensed in these Terms of Use, no additional license or other rights in or to a Trend Cloud Product or Trend Micro's and its licensor/supplier's intellectual property rights therein, are granted to Company. Company acknowledges and agrees that, as between the Parties, a Trend Cloud Product and all ideas, methods, algorithms, formulae, processes, and concepts incorporated into Trend Cloud Product (or any Service Component), and all revisions, corrections, modifications, enhancements, releases, upgrades, and other updates in, of, or to a Trend Cloud Product, and all derivative works based on any of the foregoing, and any copies of the foregoing are the intellectual property of Trend Micro and reserved to and the sole property of Trend Micro or its licensors. Company will not alter or remove Trend Micro's and its licensors' copyright notices and all other proprietary legends from any Trend Cloud Product (or any Service Component).

2.7 Changes and Improvements to Trend Cloud Products. 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 a Trend Cloud Product (*e.g.*, infrastructure, features or functionality, security, technical configurations, and/or application features) during the Term, to reflect changes in, among other things, laws, regulations, rules, improvements in technology, industry practices, patterns of use, and cyberthreat environment and capabilities. Any such improvement, change, and/or new version of a Trend Cloud Product shall be governed by these Terms of Use and shall not be treated as a breach of these Terms of Use 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. Company acknowledges and understands that the SaaS Product infrastructure/platform is hosted for the benefit of Trend Micro by a third party service provider pursuant to a hosting agreement with terms, conditions, restrictions, and policies that are imposed on and agreed by Trend Micro with respect to its use of such hosting services, some of which, the third party service provider requires to be imposed on customers of Trend Micro as "flow-ups" to its customers benefiting from such infrastructure/platform. Trend Micro specifically reserves the right (by notice in accordance with [Section 10.7](#)) to revise these Terms of Use at any time required, necessary, or advisable in order for Trend Micro to remain in compliance with its then-current third party service provider's hosting agreement (and applicable policies and other requirements thereof) for hosting Trend Cloud Products as well as the protection of Trend Micro, its Affiliates, its and their suppliers, and its and their customers and other third parties.

2.8 High-Risk Environment. Each Trend Cloud Product is 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 Trend Cloud Product in a High-Risk Environment. Company expressly acknowledges and understands that NO Trend Cloud Product has been submitted for compliance testing, certification, or approval to any governmental agency and/or a self-regulatory, standard-setting, or other industry/product-specific consensus organization for use in a High-Risk Environment. As a condition precedent to Company utilizing a Trend Cloud Product in a High-Risk Environment, Company agrees to first: (a) secure and maintain any and all certifications and/or approvals required under any Applicable Law or otherwise advisable with respect to a Trend Cloud Product that Company intends to deploy in a High-Risk Environment; and (b) undertake all appropriate and/or necessary testing, fail-safe, backup, redundancy and other measures necessary to ensure the safe deployment and use of a Trend Cloud Product by Company in a High-Risk Environment. Any access, deployment, or use of a Trend Cloud Product 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 (of its and their customers) may now or hereafter have against Trend Micro and its Affiliates with respect to Company's access, deployment, or use of a Trend Cloud Product in a High-Risk Environment.

2.9 Affiliate and/or Contractor Use. For no more than the amount of Trend Cloud Products purchased by Company as evidenced in a Certificate, as between the Parties, 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 Trend Cloud Products only in connection with 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 Trend Cloud Products only in connection with the provision of business process support, technical support, 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 Use. Each Affiliate and Contractor having access to, possession of, and/or utilization of any Trend Cloud Product will be considered an authorized End User of Company under these Terms of Use with respect to such Trend Cloud Product 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 licenses, terms, conditions, and limitations set forth in these Terms of Use as well as the Data Processing Addendum by Company's Affiliates (including, without limitation, those applicable to an Affiliate's European Personal Data that may be exported outside of the EEA

or the UK to Trend Micro by the Affiliate's use of any Trend Cloud Product purchased by Company) and/or Contractors having access to Trend Cloud Products 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 Use (and the Data Processing Addendum and/or where applicable the Standard Contractual Clauses (as defined and set forth in, and forming a part of for all purposes, the Data Processing Addendum)) 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. As a condition precedent to Company exercising the foregoing grant, Company agrees to do all things (if any) that may be necessary or required in order for Company to comply with AWS Terms and Policies (such as sharing of subscriptions for Trend Cloud Products in Company's organization) that are applicable to Company's actions permitted by Trend Micro in this Section.

3. Company Responsibilities.

3.1 AWS Account Compliance. It is a condition precedent to any rights licensed to Company under these Terms of Use that Company will comply with any and all applicable AWS Terms and Policies associated with its AWS Account, if only to the extent, such shall be applicable or related to Company's performance of its obligations or exercise of its rights hereunder and Company is solely responsible for such compliance therewith by and its End Users. Trend Micro is not responsible for any content or aspect of other services paid for by, and provided directly to, Company by AWS.

3.2 Trend Cloud Product Setup; Registration; Administrators. Company is responsible for registering, architecting, selecting, configuring, and securing operation of, as well as securing and maintaining connectivity and access to, a Trend Cloud Product. Company must provide Trend Micro with all necessary or advisable information to allow Trend Micro to provision, and make available a Trend Cloud Product, 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 User Documentation, Company will provide (and maintain) to Trend Micro, contact information for Company's Administrator(s) who are the only authorized End Users permitted to provide information required to manage, configure, access, maintain, and support each Trend Cloud Product for Company.

3.3 Authentication Credentials. Company has sole control over access and use by its End Users of each Trend Cloud Product, and is responsible for ALL activity (whether authorized or unauthorized) occurring on Company's AWS Account with respect to Trend Cloud Products. Company is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its access to and use of each Trend Cloud Product. Company will ensure that all End Users comply with Company's obligations under these Terms of Use and that the terms and conditions of Company's agreement with each End User are consistent with these Terms of Use. If Company becomes aware of any breach or non-compliance of Company's obligations under these Terms of Use by an End User, Company will immediately terminate such End User's access to the affected Trend Cloud Product and notify Trend Micro. Further, Company is responsible for population, maintenance, security, protection, loss prevention, and backup of Company's systems, networks, servers, devices, Company Data, and other content or information.

3.4 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.

3.5 Fees; Fees for Reseller Transactions.

3.5.1 Sales by Trend Micro. Company will timely pay to AWS (acting as billing agent for Trend Micro) the Fees: (a) then-published by Trend Micro on the Listing Page; or (b) in a private offer made by Trend Micro to and accepted by Company (and in each instance, plus any applicable Taxes) for access to and/or use of a Trend Cloud Product in accordance with the Usage Metric and/or Subscription Term and AWS Terms and Policies applicable to the AWS Marketplace. If the Trend Cloud Product permits Company to exceed the Usage Metric that is purchased by Company, then Company agrees to purchase and pay for any excess usage when required on the AWS Marketplace. Invoicing and collection of the Fees by AWS and any Taxes required to be withheld is done on behalf of Trend Micro for its benefit. Except as may be specifically agreed by the Parties in a private offer or other written agreement specifically referencing this Section, Trend Micro reserves the right to change or modify published Fees for each Trend Cloud Product in a manner and at such times as Trend Micro shall determine in its discretion to the extent that it is not specifically limited from doing so by the then-published AWS policies applicable to AWS Marketplace listings. All payment obligations of Fees for Trend Cloud Products (including, without limitation, any committed consumption amount applicable to any procurement hereunder) are non-cancelable and all sums paid are non-refundable or otherwise subject to proration, except and only to the extent specifically required in Sections 8 and 9.1 or by any then-published AWS Marketplace refund policy, if any, that may be applicable to a Trend Cloud Product.

3.5.2 Resales by an Appointed Reseller. If Company purchases Trend Cloud Products through a Trend Micro-appointed reseller on the AWS Marketplace, then such reseller will set the Fee to be paid by Company, but all other rights, obligations, terms, conditions, limitations, and exclusions regarding Trend Cloud Products that are ordered by Company through such reseller are exclusively set forth in these Terms of Use. All payment of Fees for such Trend Micro Products will be made by Company directly through its AWS Account and never to the reseller or 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 and no reseller has been or will be authorized or permitted to have a right to create any binding obligation, responsibility, duty, liability, warranty, guaranty, or any otherwise contract for or act on behalf of Trend Micro or modify/supersede/waive/renounce any right of Trend Micro or obligation of Company set forth in these Terms of Use.

3.6 Taxes. Except as may be expressly stated to the contrary on Trend Micro's AWS Marketplace listing, the Fees and other charges described on Trend Micro's Listing Page and in the Order do not include foreign and domestic national, federal, dominion, provincial, state, municipal, or local sales, use, VAT/GST/GSM, excise, service, digital services (access, use, and/or revenue), or similar transactional taxes (collectively "Taxes") now or hereafter levied under Applicable Laws. Company will provide Trend Micro and/or AWS information (and Company hereby authorizes AWS to provide to Trend Micro information on Company's Taxes) all required for the calculation, invoicing, and remittance of

all applicable Taxes that Trend Micro reasonably requests to determine whether Trend Micro or AWS 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/AWS with legally-sufficient tax exemption certificates for each taxing jurisdiction. Otherwise, Company will be invoiced for, and pay, all Taxes as required by Applicable Law.

4. Company Data and Content; Optional Features, Data Protection; Privacy; GDPR; HIPAA.

4.1 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 Trend Cloud Product (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 a Trend Cloud Product other than as may be expressly set forth in these Terms of Use including in relation to its provision of Support Services.

4.2 Company's Configuration; Optional Features; Right to Use Company Data.

4.2.1 Right to Use Company Data; Affiliate and Subcontractor Processing. Company hereby grants Trend Micro a limited, non-exclusive, irrevocable, royalty-free, paid-up, license to access, process, 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 Company access to and use each Trend Cloud Product and provide it Support Services; (b) to maintain and improve the operation, security efficacy, and functionality of Trend Micro's software, cloud services, and other security services including each Trend Cloud Product; (c) to identify and collect Cyberthreat Data and associated information/data, including, without limitation, potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors in order to provide each Trend Cloud Product and to improve Trend Micro's subject-matter databases; (d) for administration of these Terms of Use and each Trend Cloud Product; (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 Use and/or Trend Micro's Global Privacy Notice. Company hereby authorizes Trend Micro to make necessary or appropriate transfers of Company Data (including Personal Data) to Trend Micro Affiliates and Trend Micro subcontractors to Process Personal Data and other Company Data in accordance Company's Configuration and these Terms of Use (including the Data Processing Addendum and Global Privacy Notice). Trend Micro agrees at all times to require, ensure, and enforce compliance with these Terms of Use by any Trend Micro Affiliate and Trend Micro subcontractor acting on behalf of Trend Micro.

4.2.2 Company's Configuration. Company acknowledges and agrees that a Trend Cloud Product 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 Trend Cloud Product and assuring that Company's Configuration conforms to Company's requirements, policies, and procedures regarding any processing of Company Data (including Processing of any European Personal 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 Trend Cloud Product may be subject (including, without limitation, any European Personal 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 Trend Cloud Product 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 User Documentation thereof; and (b) activate, properly configure, restrict, limit, and/or disable each Optional Feature as may be described in the User Documentation in order to cause Company Data to be processed in a manner that meets Company's specific needs (each Trend Cloud Product 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 User Documentation, Company understands that each Trend Cloud Product is a standardized cloud service hosted by or on behalf of Trend Micro and no additional or different instructions or configurations are available to Company for such Trend Cloud Product. Trend Micro strongly recommends that Company consult Trend Micro's Privacy and Personal Data Collection Disclosure (at https://success.trendmicro.com/dcx/s/data-collection-disclosure?language=en_US) and Global Privacy Notice in order to understand what Personal Data is collected by Trend Cloud Products based on Company's Configuration.

4.3 Personal Data Protection. A Trend Cloud Product 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 Personal Data Protection Laws. In accordance with the instructions made known through Company's Configuration and these Terms of Use, Trend Micro may Process 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. As is more fully described in the Data Processing Addendum, Trend Micro has and will continue to implement technical, organizational and administrative security measures in order to protect such Personal Data provided to and utilized in connection with each Trend Cloud Product 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.

4.4 European Personal Data Processing; Relationship of the Parties. By agreeing to these Terms of Use, each of Company and Trend Micro acknowledges and agrees that it is also entering into and agreeing to be bound by the Data Processing Addendum, it being further agreed that the Addendum shall only apply, if and to the extent that Trend Micro acts as a Processor or sub-Processor of Personal Data that Company (and its Affiliates that have been authorized to access and/or utilize Trend Cloud Products hereunder) provides or makes available to Trend Micro hereunder. With respect to each Affiliate of Company that accesses or utilizes any Trend Cloud Product as permitted herein, Company hereby enters into and agrees to be bound by the Data Processing Addendum 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.

4.5 Business Associate – Applicable Only to USA-Based Companies and Affiliates. This Section only applies to Company (and any Affiliate that Company has authorized and permitted to access and/or utilize a Trend Cloud Product made available pursuant to [Section 2.9](#) of these Terms of Use) if and to the extent that such Company/Affiliate is a Covered Entity or a Business Associate under HIPAA that makes available Protected Health Information (herein “PHI”) as a part of Company Data it provides and or otherwise makes available to Trend Micro under these Terms of Use and Trend Micro otherwise meets the definition of a Business Associate under HIPAA with respect to such PHI. Trend Micro states that it has and will maintain the necessary processes, procedures, and training required to act as a Business Associate of Company/Affiliate(s) under HIPAA. In an effort to avoid the need to amend these Terms of Use now or in the future, the Parties hereby agree that Trend Micro’s HIPAA Business Associate Agreement (at www.trendmicro.com/en_us/about/trust-center/compliance.html?modal=s4m-btn-hipaa-learn-more-3b1e3a) is 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 and is applicable if and to the extent Trend Micro acts as a Business Associate with respect to Company’s or an Affiliate’s PHI as the case may be. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, restated, and/or expanded from time-to-time that is an Applicable Law only for USA Covered Entities, Business Associates, and its and their PHI as each such term is defined by HIPAA.

5. Support Services.

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

5.2 Updates to Service Component. At its sole discretion, Trend Micro may provide periodic updates to the Service Component, 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 Service Component and each Trend Cloud Product depends upon Company’s prompt installation of any and all such updates to any Service Component that Trend Micro makes available to Company. Any failure to timely update may cause a degradation or failure such that the affected Trend Cloud Product will no longer meet its warranty, for which, Trend Micro assume no responsibility.

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. Notwithstanding the foregoing, the failure by the disclosing party to designate any tangible or intangible information as Confidential Information shall not give the receiving party the right to treat such information as free from the restrictions imposed by these Terms of Use if the circumstances would lead a reasonable person to believe that such information is Confidential Information. Each Party agrees that it will not use such Confidential Information, except as authorized under these Terms of Use, 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 Use including the Global Privacy Notice. 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 Use; 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 Use, each Party will return to, or irretrievably destroy, the other Party’s Confidential Information in its possession. The Parties agree that Cyberthreat Data is not Company Confidential Information hereunder. **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, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by these Terms of Use ONLY with respect to the subject matter hereof and the transactions undertaken pursuant hereto.**

6.2 Feedback. Notwithstanding anything to the contrary herein: (a) Trend Micro will have no obligation of any kind to any person with respect to any Trend Cloud Product-related comments, suggestions, design changes or improvements, that Company may elect to provide to Trend Micro in either verbal or written form (collectively, “Trend Cloud Product 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 Trend Cloud Product 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 Trend Cloud Product 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. Trend Micro agrees to never attribute any Trend Cloud Product Feedback to Company.

7. Warranty; Warranty Disclaimers; Limitations and Exclusions from Liability and Damages.

7.1 Limited Warranty. In connection with a Trend Cloud Product, Trend Micro warrants only to Company that a Trend Cloud Product provided under these Terms of Use will substantially conform to its User Documentation under normal use and circumstances until the expiration or termination of Company's right to access and use of such Trend Cloud Product under these Terms of Use. The foregoing limited warranty does not cover events or circumstances caused by accident, abuse, or use of such Trend Cloud Product in a manner inconsistent with these Terms of Use, the User Documentation, or other guidance provided by Trend Micro or resulting from events of an Excused Performance Event. If it is established that Trend Micro has breached the above warranty after notice from Company, Trend Micro will: (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 Use and Trend Micro will provide a refund of unused Fees pre-paid (including a prorated refund of any current Subscription Fees) 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 Use to the contrary.**

7.2 Disclaimer of All Other Conditions, Guarantees, and Warranties. EXCEPT AS SET FORTH IN SECTION 7.1, EACH TREND CLOUD PRODUCT, 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. WITH RESPECT TO EACH TREND CLOUD PRODUCT AND SUPPORT SERVICES, TREND MICRO (ON BEHALF OF ITSELF AND ITS AFFILIATES, SUPPLIERS (SUCH AS AWS), LICENSORS, AND RESELLERS) HEREBY 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, 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, PROVIDE A CONDITION, ASSURE, OR GUARANTEE (SPECIFICALLY OR BY IMPLICATION) THAT: (a) A TREND CLOUD PRODUCT WILL BE CONTINUOUSLY AVAILABLE OR USE THEREOF UNINTERRUPTED; (b) THE FUNCTIONS AND FEATURES CONTAINED IN A TREND CLOUD PRODUCT WILL MEET THE REQUIREMENTS OF COMPANY OR THAT A TREND CLOUD PRODUCT WILL SATISFY ANY PARTICULAR BUSINESS, TECHNOLOGICAL, SERVICE, SECURITY, OR OTHER NEED OR REQUIREMENT (SUCH AS USE IN A HIGH-RISK ENVIRONMENT) OF COMPANY; (c) ACCESS TO AND USE OF A TREND CLOUD PRODUCT WILL ENSURE COMPLETE AND PERFECT PROTECTION OF COMPANY'S SYSTEMS, NETWORKS, DEVICES, ASSETS, WORKLOADS, END POINTS, INFORMATION, AND/OR DATA FROM AND AGAINST ANY AND/OR ALL PRESENT AND FUTURE SECURITY THREATS TO, OR SAFE FROM INTRUSIONS OR OTHER SECURITY RISKS OR ATTACKS BY ANY PERSON; (d) A TREND CLOUD PRODUCT WILL DETECT, IDENTIFY, BLOCK, REMOVE, REMEDIATE, OR RESOLVE SOME, ANY, OR ALL CYBERTHREAT DATA, MALICIOUS CODE THREATS, OR OTHER UNWANTED INTRUSIONS; (e) A TREND CLOUD PRODUCT WILL BE PROVIDED OR PERFORM ERROR-FREE, WITHOUT VULNERABILITIES, OR THAT TREND MICRO WILL IDENTIFY AND/OR CORRECT ALL ERRORS OR VULNERABILITIES IN A TREND CLOUD PRODUCT; OR (f) A TREND CLOUD PRODUCT WILL OPERATE IN COMBINATION WITH COMPANY DATA, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, CLOUD SERVICE, OR DATA NOT PROVIDED OR REQUIRED BY TREND MICRO.

7.3 Excluded Damages; Limitation of Liability.

7.3.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR TREND MICRO'S LIABILITY ARISING FROM OR RELATED TO (a) PERSONAL INJURY OR DEATH DIRECTLY ATTRIBUTABLE TO TREND MICRO'S NEGLIGENCE; (b) EVENTS OR CIRCUMSTANCES ARISING FROM THE INTENTIONAL, WILLFUL, OR FRAUDULENT ACTS OF TREND MICRO; AND/OR (c) PAYMENT OF MONIES UNDER ANY INDEMNITY OR FEES AGREED HEREIN, TREND MICRO SHALL NOT BE LIABLE TO COMPANY FOR ANY EXCLUDED DAMAGES ARISING FROM OR RELATED TO THESE TERMS OF USE OR THE SUBJECT MATTER HEREOF (SUCH AS ANY TREND CLOUD PRODUCT) REGARDLESS OF THE NATURE OF THE CLAIM OR CAUSE OF ACTION OR THEORY ASSERTED, INCLUDING, WITHOUT LIMITATION: BREACH OF CONTRACT; STRICT LIABILITY; 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 EVEN IF SUCH TREND MICRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH EXCLUDED DAMAGES OR SUCH EXCLUDED DAMAGES WERE REASONABLY FORESEEABLE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THESE TERMS OF USE.

7.3.2 IF COMPANY IS IN THE EUROPEAN ECONOMIC AREA OR THE UNITED KINGDOM, 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.

7.4 Direct Damages. SUBJECT TO SECTIONS 7.3.1 AND 7.3.2, A PARTY'S LIABILITY TO THE OTHER PARTY ARISING FROM OR RELATED TO SUCH PARTY'S BREACH OF THESE TERMS OF USE OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE NATURE OF THE CLAIM OR CAUSE OF ACTION OR THEORY OF LIABILITY ASSERTED, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES OF ANY KIND OR NATURE 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 ACTUALLY PAID BY COMPANY FOR THE SPECIFIC TREND CLOUD PRODUCT GIVING RISE TO THE CLAIM/CAUSE OF ACTION HEREUNDER

THESE TERMS OF USE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE FIRST GIVING RISE TO SUCH CLAIM/CAUSE OF ACTION.

8. Term and Termination.

8.1 Term; Auto-Renewal. These Terms of Use and Company's right to access and use of a specific Trend Cloud Product will become effective as of the date of the Order thereto is accepted by AWS for the benefit of Trend Micro as evidenced in the Certificate: (a) if such Trend Cloud Product is purchased under a usage-based consumption pricing listing, until cancelled or terminated by Company or Trend Micro as permitted by these Terms of Use and/or AWS Terms and Policies; or (b) if such Trend Cloud Product is purchased as a Subscription, until the Subscription Term expires or is otherwise terminated (for each Trend Cloud Product purchased hereunder, the "**Term**"), subject always to earlier termination by either Party of a Trend Cloud Product in accordance with this Section 8, these Terms of Use, and/or any AWS Terms and Policies. If Company has selected auto-renewal of a Trend Cloud Product if and only where offered by Trend Micro, such renewal will be priced at the Fees and on the Terms of Use for the Trend Cloud Product then-published on the AWS Marketplace.

8.2 Warnings; Suspension; Termination by Trend Micro. In addition to any other rights or remedies that Trend Micro may have under Applicable Laws, Trend Micro reserves the right to take immediate action if Trend Micro believes in good faith that Company (and/or one or more of its End Users) is not in compliance with, or has breached or violated these Terms of Use (including, without limitation, Section 2.1 and/or Section 2.2) and Company's actions, inactions, breach, or violation could otherwise subject Trend Micro, its Affiliates, its licensors, suppliers (such as AWS), or any third party to liability, loss, or damages with respect to Company's (and/or one or more of its End Users) continued access to, and/or use of, such Trend Cloud Product, then and in each such event, Trend may simultaneously undertake one or more of the following actions: (a) issuance of warning(s) directly to Company requiring immediate undertaking of resolution/remediation of the subject matter; or (b) provide notice of immediate suspension of access to and use of all or any portion of such Trend Cloud Product or content or resource in the event that Trend Micro develops a good faith belief that any action, inaction, breach, or violation described herein this Section have occurred or are suspected to have occurred. In addition to the foregoing actions that Trend Micro may take and not in lieu thereof, Trend may provide notice of termination of these Terms of Use for material breach (including, without limitation, non-payment of monies due and payable with respect hereto) with respect to any Trend Cloud Product with effect twenty (20) days after such notice unless such is cured to Trend Micro's satisfaction within such time period. For any warning, termination, or suspension by Trend Micro in accordance with this Section 8.2, Trend Micro will not provide, or be liable for, any refund or proration of Fees.

8.3 Termination by Company. Company may terminate these Terms of Use as to any impacted Trend Cloud Product by giving notice if Trend Micro materially breaches these Terms of Use with respect to such Trend Cloud Product and Trend Micro does not cure that breach within twenty (20) days after receiving notice of the alleged breach. Only if Company terminates these Terms of Use for an uncured material breach by Trend Micro, 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 and use of such terminated Trend Cloud Product.

8.4 Suspension and Termination by AWS. Company acknowledges that the AWS Terms and Policies may include rights in AWS to suspend and terminate Company's AWS account, which will suspend or terminate Company's access to, and use of, each affected Trend Cloud Product. In such event, Trend Micro will not provide, or be liable for, any refund, including Fees pre-paid by Company for access to and use of such Trend Cloud Products.

8.5 Company's Termination Duties. Upon expiration or termination of these Terms of Use and/or Company's use of each Trend Cloud Product for any reason or no reason, Company will: (a) cease use of and remove the affected Trend Cloud Product (including any Service Component) from Company's AWS account and cease any access and use of such Trend Cloud Product; and (b) irretrievably destroy all copies in Company's possession or control of the Service Component and any User Documentation 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.

8.6 Survival. Upon termination or expiration of these Terms of Use and regardless of reason therefor, the following Sections shall survive such termination or expiration: Sections 1, 2.1.2, 2.2, 2.3, 2.4, 2.6, 2.8, 3, 4, 6, 7, 8, 9, and 10 and any other provision that expressly states that its terms and conditions shall survive the expiration or termination of these Terms of Use.

9. IP Indemnity.

9.1 IP Indemnity. Trend Micro (at its cost, including, without limitation, attorney, technical, and expert fees) will defend 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 that are specifically attributable to such IP Claim or those amounts agreed to by Trend Micro in a monetary settlement attributable to such IP Claim, subject always to the conditions, qualifications and limitations in this Section 9. **The indemnity provided in this Section 9.1 for the benefit of Company states Trend Micro's exclusive obligation and entire liability to Company and Company's exclusive right and remedy with respect to IP Claims. This indemnity is personal to Company and may not be (in whole or in part) assigned, transferred, or passed through to or for the benefit of any third party.**

9.2 Mitigation. Should any Trend Cloud Product at any time become, or in Trend Micro's opinion could become, the subject of an IP Claim, Trend Micro shall have the right, in its discretion and at its sole option to: (a) procure for Company the right to continue accessing and using any Trend Cloud Product in accordance with these Terms of Use; or (b) modify Trend Cloud Product such that it no longer is the subject of an IP Claim, while maintaining substantially the same functionality of the then-existing Trend Cloud Product. If both of these options are unreasonable in Trend Micro's opinion, then on notice to Company, Trend Micro may, on written notice to Company, immediately terminate these Terms of Use and Company's right to access or use of the affected Trend Cloud Product(s) and promptly refund to Company, the unused Fees (if any) pre-paid by Company for the remaining portion of the Subscription Term (if any) that is beyond such termination date.

9.3 Conditions of Indemnification. The indemnification obligations of Trend Micro are subject to and conditioned on Company: (a) providing prompt written notice to Trend Micro of an IP Claim; (b) tendering to Trend Micro the sole and complete control and authority over the defense, negotiations, litigation and/or any settlement of the IP Claim; (c) providing full and timely cooperation with Trend Micro and providing Trend Micro with all reasonably requested information, cooperation and assistance at Company's expense; and (d) has not compromised or settled such IP Claim. Indemnitee Party may participate in defense of the matter at its cost with counsel of its selection. 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 its liability or pay any money with respect to such IP Claim. Trend Micro is not responsible for any costs, expenses, settlement, or compromise incurred or made by Company in connection with any IP Claim without Trend Micro's prior written approval.

10. General Provisions.

10.1 Assignment. Company will not assign (in whole or in part) these Terms of Use, or delegate or sublicense any of Company's rights or obligations under these Terms of Use, without Trend Micro's prior written consent. In its sole discretion and without notice to Company, Trend Micro may assign these Terms of Use, including to any Trend Micro Affiliate. Any assignment or transfer in violation of this Section 10.1 will be void. Subject to the foregoing, these Terms of Use will be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

10.2 Interpretation. The headings within these Terms of Use are for convenience only and will not affect the interpretation of these Terms of Use. "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.

10.3 No Waivers. The failure by either Party to enforce any provision of these Terms of Use 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.

10.4 Export/Import Control. In connection with these Terms of Use, the access, use, export or re-export of a Trend Cloud Product 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 and/or its End Users. 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 and/or its End Users and/or the performance of Company 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 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.

10.5 Governing Law; Venue/Jurisdiction. The Parties agree that these Terms of Use (and any amendments, additions, renewals, supplements or modifications hereto) and any questions, disputes, claims, causes of action, and proceedings based on, arising out of, or related to, these Terms of Use, or its validity, interpretation, construction, or termination or the relationship, rights, duties, or performance of the Parties arising from or related in any way hereto, will be governed by and construed in accordance with the laws of the State of New York (USA) and controlling U.S. federal law applicable to agreements entered into and to be performed wholly therein, excluding its conflicts of laws principles and rules. These Terms of Use will not be interpreted or governed by the Uniform Computer Information Transactions Act (UCITA) or the United Nations Convention on Contracts for the International Sale of Goods, the application of each of which is hereby expressly excluded. 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 Use be drawn up in English and have also agreed that all notices or other documents required by or contemplated in these Terms of Use be written in English. *Les Parties ont exigé que ces conditions d'utilisation soient rédigées en anglais et ont également convenu que tous les avis ou autres documents exigés ou prévus dans les présentes conditions d'utilisation soient rédigés en anglais.*

10.6 Government Agency Use. Each Trend Cloud Product (including any component software) and accompanying User Documentation 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 cloud services, commercially-available hardware, technical documentation, and/or commercially-available user documentation with the same rights and restrictions generally applicable to each Trend Cloud Product. Access and use of a Trend Cloud Product by any Government Agency may be subject to mandatory applicable laws; *provided, however*, 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 a Trend Cloud Product. If any Government Agency requires or needs greater or different rights in or to access and/or use a Trend Cloud Product other than those rights that are granted in these Terms of Use, 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 10.6, "**Government Agency**" shall mean a national, federal, provincial, state, municipal, and/or local agency or entity that Orders through the AWS Marketplace for the right to access/use a Trend Cloud Product under these Terms of Use.

10.7 Notices.

10.7.1 If to Company. Trend Micro may provide any notice to Company under these Terms of Use by: (a) posting a notice on <https://success.trendmicro.com/technical-support> for Support Services (the "**Trend Micro Site**"); or (b) sending a message to the email address

then associated with Company's account with Trend Micro. Notices Trend Micro provides by posting on the Trend Micro Site will be effective upon posting and 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.

10.7.2 If to Trend Micro. To give Trend Micro notice under these Terms of Use, Company must contact Trend Micro as follows: (a) by email to legal_notice@trendmicro.com; or (b) by personal delivery, overnight courier or registered or certified mail to Trend Micro Incorporated, 225 E. John Carpenter Frwy., Suite 1500, Irving, TX 75062 to the attention of President with a copy to the General Counsel. Trend Micro may update the email or mailing address for notices by posting a notice on the Trend Micro Site. Notices provided by personal delivery will be effective immediately. Notices provided by email or overnight courier will be effective one (1) business day after they are sent. Notices provided registered or certified mail will be effective three (3) business days after they are sent.

10.7.3 Consent to Electronic and Other Communications and Notices. Company agrees that Trend Micro may send Company required legal notices (other than with respect to [Sections 8 or 9 or an alleged breach here](#) which must be sent in accordance with [Sections 10.7.1 or 10.7.2](#)) and other communications about Trend Cloud Products, including, without limitation, modifications to the User Documentation, Acceptable Use Policy, the Global Privacy Notice, the Data Processing Addendum and/or the Standard Contractual Clauses forming a part thereof, and/or the Business Associate Agreement (each a "Communication"). Trend Micro may provide Communications via (among other methods): (a) in-person contacts by Trend Micro and/or reseller personnel; (b) in-Product notices or email to registered email addresses of named Company contacts; and/or (c) posted Communications on Trend Micro's websites. With respect to email notices, any such email notice to Company will be sent by Trend Micro to the last-known account administrator(s) named by Company. Company is responsible for ensuring that the email address for the Company's account administrator(s) is accurate and current. Any email notice that Trend Micro sends to the then-current email address will be effective when sent, whether or not Company actually receives the email. By accepting these Terms of Use, Company consents to receive all Communications through these means.

10.8 Severability; Enforcement. The Parties agree that the unenforceability or invalidity of any term or provision of these Terms of Use shall not impair the enforceability or validity of any other part of these Terms of Use. In the event that any term or provision of these Terms of Use conflicts with the governing law under which these Terms of Use 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, the Parties agree that the court making such determination shall have the power, and the Parties hereby request that such court exercise such power, to modify, amend, or restate any such unenforceable term or provision of these Terms of Use 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 Use, or by making such other modifications as it deems appropriate that is valid and enforceable that and that comes closest to expressing the original intention of the Parties to the greatest lawful extent under these Terms of Use.

10.9 Excused Performance Events. A Party shall not be liable for any delay or failure to perform its non-monetary obligations hereunder, if any, due to any Excused Performance Event. If a Party is affected by such an Excused Performance Event, such Party will: (a) take commercially reasonable steps to minimize and/or mitigate any delays or failures related to any Excused Performance Event; (b) provide prompt written notice to the other Party of the nature of such Excused Performance Event and the expected duration thereof; (c) make reasonable efforts that are consistent with accepted practices in the industry to resume performance as soon as practicable under the circumstances and mitigate the effects of the Excused Performance Event; and (d) resume performing its obligations hereunder promptly following the removal or reasonable circumvention of such Excused Performance Event. This Section does not excuse an affected Party's obligation to take reasonable steps to follow its normal disaster or incident recovery procedures. The Parties agree that any delay or failure arising from or related to an Excused Performance Event shall not constitute a breach of these Terms of Use.

10.10 Independent Contractors. Nothing in these Terms of Use 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.

10.11 Subcontractors. Trend Micro may from time-to-time in its discretion, engage third parties by written contract to assist or support Trend Micro in connection with the provision of Trend Cloud Products and/or Support Services (each, a "Subcontractor"). Trend Micro will be responsible to Company for the acts and omissions of its Subcontractors in support hereof as if done or not done by Trend Micro.

10.12 Third Party Beneficiaries. These Terms of Use 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 Scotland, Ireland, Singapore, Malaysia, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), and/or otherwise waived or renounced. Except as set forth in the first sentence of this Section, these Terms of Use 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 Use to the contrary, Trend Micro's Affiliates, licensors, suppliers, and resellers shall be intended third party beneficiaries for certain exclusions, limitations, and disclaimers with respect to Trend Cloud Products as stated in [Section 7](#) of these Terms of Use.