

# Trend Micro Partner Program and Partner Portal Use Agreement - Reseller

THESE TERMS AND CONDITIONS (“Terms”) apply with effect from 01 January, 2022 (the “Effective Date”) between Trend Micro EMEA Limited of IDA Business & Technology Park, Model Farm Road, Cork, Ireland (“Trend Micro”) and each Trend Micro Partner which accepts these Terms (“Trend Micro Partner”); and these Terms replace and supersede any earlier version of these Terms in force prior to the Effective Date.

Each of Trend Micro Partner and Trend Micro are sometimes herein referred to individually as a “Party” and collectively as the “Parties” and every other human being or entity is a “third Party.”

## 1. About our terms and conditions

- 1.1 This Agreement explains how you may use the Partner Portal and participate in the Trend Micro Partner Program using the Content included or contained in the Partner Portal from time to time.
- 1.2 You should read the terms of this Agreement carefully before using the Partner Portal and participating in the Trend Micro Partner Program.
- 1.3 By registering as a Portal User as part of the Trend Micro Partner Program, or accessing or using the Partner Portal or otherwise indicating your consent, you agree to be bound by the terms of this Agreement.
- 1.4 If you do not agree with or accept any of the terms of this Agreement, you should stop using the Partner Portal immediately.

## 2. Definitions and interpretation of these Terms

- 2.1 The following words and phrases not otherwise defined in this Agreement shall have the meanings set out below:

<b>“Account”</b>	means the account created on the Partner Portal by a registered Portal User;
<b>“Authorised Distributor”</b>	means an entity that then-currently has an agreement with Trend Micro to act as a distributor of Trend Micro Products in the Territory;
<b>“Authorised Reseller”</b>	means a reseller who is a Registered Portal User;
<b>“Business Day”</b>	means between the hours of 09.00 and 17.30 (GMT) Monday to Friday (inclusive) other than public holidays;
<b>“Content”</b>	means any text, images, video, audio or other multimedia content, software or other information or material submitted to or on the Partner Portal;
<b>“EULA”</b>	shall mean the end-user license agreement entered into between Trend Micro and an End-User, provided by Trend Micro from time to time here: <a href="https://www.trendmicro.com/en_us/about/legal.html">https://www.trendmicro.com/en_us/about/legal.html</a>
<b>“Data Processing Addendum/Addendum”</b>	means Trend Micro’s Data Processing Addendum (at <a href="https://www.trendmicro.com/en_us/about/trust-center/privacy/gdpr/data-processing-addendum.html">https://www.trendmicro.com/en_us/about/trust-center/privacy/gdpr/data-processing-addendum.html</a> or as may be requested by Company from <a href="mailto:gdpr@trendmicro.com">gdpr@trendmicro.com</a> ) that is applicable if and to the extent Trend Micro acts as a ‘processor’ or ‘sub-processor’ for Company of Personal Data. The Parties agree that the Data Processing Addendum that form a part thereof 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.
<b>“Data Protection Law”</b>	means all laws applicable (in whole or in part) to a Party’s Processing of Personal Data under or in connection with these Terms of Use including, as may be applicable, European Data Protection Law, as introduced, amended or superseded from time to time.
<b>“European Data Protection Law”</b>	means: (i) Regulation 2016/679 (General Data Protection Regulation) (the “EU GDPR”); (ii) the EU e-Privacy Directive (Directive 2002/58/EC); (iii) 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”); (iv) 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 (iv) any and all applicable national data protection laws made under, pursuant, supplemental to or in order to give effect to (i) – (iv); 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 Data Protection Laws: “Controller”, “Data Protection Impact Assessment”, “Data Subject”, “Process”, “Processed”, “Processing”, “Processor”.

<b>"European Personal Data"</b>	shall mean Personal Data if and only to the extent that European Data Protection Law applies to Trend Micro with respect to its Processing of such Personal Data.
<b>"GDPR"</b>	means EU GDPR and/or the UK GDPR, as applicable.
<b>"Global Privacy Notice"</b>	means Trend's Global Privacy Notice published from time-to-time at <a href="https://www.trendmicro.com/en_us/about/legal/privacy-policy-product.html">https://www.trendmicro.com/en_us/about/legal/privacy-policy-product.html</a> or as may be requested by Customer from <a href="mailto:legal_notice@trendmicro.com">legal_notice@trendmicro.com</a> .
<b>"Incentive Programs"</b>	means any offer of additional funding or any special terms or entitlements to Trend Micro Partners for programs, people or activities, offered by Trend Micro at its sole discretion;
<b>"Individual Participant"</b>	means individuals, who are employees or contractors of the relevant Registered Portal User and are either able to nominate themselves or are nominated by the Registered Portal User to participate in certain Program activities on behalf of the Registered Portal User, in accordance with instructions given by Trend Micro from time to time;
<b>"Partner Portal"</b>	means the Trend Micro website for access and use by Trend Micro Partners;
<b>"Personal Data"</b>	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 Data Protection Laws.
<b>"Policies and Procedures"</b>	means the policies, procedures and rules of engagement determined solely by Trend Micro from time to time to determine the appropriate level of participation for each applicant to the Trend Micro Partner Program.
<b>"Registered Portal User"</b>	means (a) the person who set(s) up the Account, who will be presumed to be authorised on behalf of the Trend Micro Partner; and (b) (if different) any person who has obtained access to the Trend Micro Partner log-on and password information required to make changes to the Trend Micro Partner's Account; and (c) You;
<b>"Services"</b>	means any and all services, provided to you by Trend Micro, including but not limited to access to the services provided by the Partner Portal, including without limitation any Trend Micro Partner Program schemes, software and the user-managed functionality of the Partner Portal;
<b>"Standard Contractual Clauses" or "Clauses"</b>	means the model clauses for the transfer of Personal Data to Processors set out in the European Commission's Decision 2010/87/EU of 5 February 2010 for transfers of European Personal Data. Any such Clauses previously entered into between Company and/or its Affiliates, on the one hand, and Trend Micro and/or any of its Affiliates, on the other hand, shall terminate and cease to have effect on the effective date hereof (without prejudice to any accrued obligations or liabilities thereunder).
<b>"Shared Portal Area"</b>	means areas of the Partner Portal where the Portal User is able to upload Content which can be accessed by other Portal Users;
<b>"Software Services"</b>	means any software or software related service included in Services;
<b>"System Infrastructure"</b>	means the software and hardware infrastructure provided by Trend Micro to enable the operation of the Partner Portal;
<b>"Territory"</b>	means any country within Trend Micro's EMEA region, save for any country within which Trend Micro is prohibited from trading (including but not limited to countries subject to international trade sanctions). A full list of countries in the Territory from time to time may be obtained from Trend Micro by emailing <a href="mailto:emea_partner_program@trendmicro.co.uk">mailto:emea_partner_program@trendmicro.co.uk</a> .
<b>"Trend Micro"</b>	means Trend Micro EMEA Limited and its affiliates;
<b>"Trend Micro Partner"</b>	means a person who is one or more of the following of Trend Micro's partners:- <b>"channel"</b> partners: Authorised Reseller; national reseller; systems integrators; service providers; cloud service providers; <b>"alliance"</b> partners: technology developers and system suppliers; original equipment manufacturers; global systems integrators; <b>"referral"</b> partners: trusted advisors; affiliates (consumer); affiliates (small & medium-sized business) and who is (a) the person who set(s) up the Account, who will be presumed to be authorised on behalf of the Trend Micro Partner; and (b) (if different) any person who has obtained access to the Trend Micro Partner log-on and password information required to make changes to the Trend Micro Partner's Account; and (c) You;

**“Trend Micro Partner Program”**

means the Program operated by Trend Micro, whereby Trend Micro Partners agree to abide by these terms and conditions in exchange for certain benefits from Trend Micro, including but not limited to Services offered via the Partner Portal from time to time, including but not limited to incentive schemes, discount schemes, bonus schemes and pricing schemes;

**“Trend Micro Products”**

means all the Trend Micro products available for sale only within the Territory;

**“Trend Micro privacy Policy”**

means the policy <http://www.trendmicro.co.uk/about/legal-policies/privacy/index.html> which governs how we process any personal data collected from you;

**“Uploaded Portal User Content”**

means any Content uploaded to the site by a Portal User relating to a Portal User’s Account or otherwise;

**“We, us or our”**

means Trend Micro;

**“You or your”**

means the Portal User, and for the avoidance of doubt, any other person accessing or using the Services, the Partner Portal or its Content.

- 2.2 References to persons shall include bodies corporate and unincorporated, associations, partnerships and individuals.
- 2.3 References to Clauses and Sub-Clauses are to the clauses or sub-clauses of these Terms.
- 2.4 All references to a statute or statutory provision shall be construed as including references to any modification, consolidation or re-enactment for the time being in force.
- 2.5 Headings are for convenience of reference only and shall not affect the interpretation of these Terms.

### **3. About the Partner Portal**

- 3.1 The Partner Portal is a web interface provided by Trend Micro, which enables Trend Micro Partners to access and provide information relevant to their business relationship with Trend Micro; to take part in incentive schemes and transact business with Trend Micro via the Trend Micro Partner Program.
- 3.2 The Partner Portal provides Trend Micro with the ability to review Trend Micro Partner’s performance and pipeline; to track deals and monitor fulfilment. It also provides a means for Trend Micro to communicate and share information with its partners.

### **4. Registration of Portal User**

- 4.1 Trend Micro Partner uses the Partner Portal entirely at its own risk and acknowledges and agrees that use of the Partner Portal places no obligations or duties upon Trend Micro relating to the provision of the Partner Portal or otherwise save as expressly set out in this Agreement.
- 4.2 Save that Trend Micro shall never unlawfully discriminate against a person on any proscribed grounds, Trend Micro has the absolute unfettered discretion whether or not to accept any application for registration of any Portal User and any person whose application for registration is refused has no right of appeal and is not entitled to request or be given reasons or any explanation for refusal.
- 4.3 Trend Micro has the right without notice to you to de-register any Registered Portal User or suspend, terminate, block or prohibit any Registered Portal User’s access to its Account at any time without sanction or incurring any liability to the Portal User, the Trend Micro Partner and/ or their representatives and/or agents and/or employees.
- 4.4 Trend Micro shall de-register any Registered Portal User whose Account has not been accessed by the Registered Portal User for a period exceeding 6 (six) months. The relevant Portal User’s Account and any Uploaded Portal User Content relating to the Registered Portal User’s Account may at Trend Micro’s absolute discretion be deleted and in the event of such deletion the relevant Portal User shall have no right of recourse against Trend Micro.
- 4.5 Authorised Trend Micro Partners shall be entitled to describe themselves as a “Trend Micro Authorised Trend Micro Partner” unless and until Trend Micro in its absolute discretion either gives notice to the Authorised Trend Micro Partner that it is not Authorised, the Authorised Trend Micro Partner is de-registered, its access to account is suspended, terminated, blocked or prohibited by Trend Micro or the Authorised Trend Micro Partner closes its Account, whichever is the soonest.
- 4.6 Completion of the registration process and agreement to the terms of this Agreement conclusively establishes that the Trend Micro Partner has read and accepted the Agreement on behalf of itself and any Individual Participants. Any Registered Portal User entitlement pursuant to this Agreement begins only after completion of the registration process and agreement to the terms of the Agreement has been completed. Trend Micro reserves the right to amend the terms of the Agreement at any time and without incurring any liability to Trend Micro Partner, and Trend Micro Partner shall be deemed to have accepted any changes in the Agreement by continuing to use the Partner Portal after having been informed previously about the new terms. This Agreement (including any amendments thereto) may be printed from your computer.
- 4.7 Once you are a Registered Portal User and you have agreed to the Agreement, You will have the opportunity to participate in certain activities provided by Trend Micro via the Trend Micro Partner Program or its authorised partners and notified to You by Trend Micro from time to time.

- 4.8 Registered Portal Users will be allowed to have a separate Account for each individual country in which they trade and for which sales data are reported to Trend Micro. Branch offices and subsidiary companies of any Registered Portal User within a single country are not eligible to participate in the Trend Micro Partner Program in their own right, unless prior authorised by Trend Micro.
- 4.9 You agree to notify the Partner Helpdesk immediately if you suspect or become aware of any unauthorised use of the Partner Portal either in respect of your own Account or the Accounts of your Individual Participants, or any other breach of security.
- 4.10 You agree not to use any automatic device or manual process to interfere or attempt to interfere with the proper working of the System Infrastructure. You agree not to take any action that imposes an unreasonable load on the System Infrastructure.

## **5. Use of the Partner Portal**

- 5.1 You own all of the Uploaded Portal User Content, feedback, and Personal Data you provide to us, and grant to Trend Micro and its servants, agents or representatives a non-exclusive license to make such use of it solely in connection with the contractual purpose.
- 5.2 The Partner Portal is not a data storage service and any Portal User that uses any data storage provided by the Partner Portal shall keep full back-up copies of all Uploaded Portal User Content. For the avoidance of doubt, except as required by applicable law, Trend Micro shall be under no obligation to provide to the Portal User copies, facsimiles, extracts, information or other data relating to Uploaded Portal User Content.
- 5.3 Information contained on the Partner Portal is given for general information and interest purposes only. Trend Micro is not responsible for typographic errors or other inaccuracies in the content provided on the Partner Portal. Trend Micro intends the information contained in the Partner Portal to be accurate and reliable. However, errors may occasionally occur.
- 5.4 Any Software Services including but not limited to software that are made available to download or use from the Partner Portal are the copyrighted work of Trend Micro and/or its licensors. Use of the Software Services is subject to the terms and conditions of the license agreement, which accompanies or is included with the Software Services or other applicable license agreement between You and the applicable Trend Micro entity from which You have Licensed the Software Services ("License Agreement"). You must read and accept the License Agreement before You use the related Software Services. Any use, reproduction or distribution of the Software Services that is not in accordance with a relevant License Agreement is expressly prohibited.
- 5.5 You may only use the Partner Portal and the Services for lawful and proper purposes and You will comply with all applicable laws, regulations and codes of practice within the jurisdiction /country from which You are accessing the Partner Portal and the Services. In particular, You agree that You shall not:
  - 5.5.1 use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of a Software Service including but not limited to uploading or making available files containing corrupt data or viruses via whatever means;
  - 5.5.2 take any action that imposes an unreasonable or disproportionately large load on the System Infrastructure;
  - 5.5.3 copy all or any part of a Software Service;
  - 5.5.4 rent, lease, sub-license, loan, translate, merge adapt, vary or modify a Software Service and (subject to the right to upload materials or otherwise except as expressly permitted by Trend Micro in writing) not make alterations to, or modifications of, the whole or any part of a Software Service nor permit a Software Service or any part of it to be combined with, or become incorporated in, any other programs; and
  - 5.5.5 disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of any Software Service nor attempt to do any such things; or
  - 5.5.6 send any form of email or electronic marketing to any recipient who has in any way, using any method, opted out from receiving electronic marketing from You or Trend Micro.
- 5.6 You undertake not to post to or send via or use in relation to Shared Portal Area any materials that are or could reasonably be construed as: (i) defamatory, libelous, obscene, offensive, abusive, liable to incite racial hatred, discriminatory or blasphemous; (ii) in breach of any obligation of confidence or privacy or any trade secret; (iii) infringing the proprietary rights of any third party or for which You have not obtained all necessary licenses and/or approvals; or (iv) violating any other law.
- 5.7 You also agree not to transmit to or send via Shared Portal Area any materials which could reasonably be held to constitute or encourage conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of any country or other competent authority, or infringe the rights of any third party enforceable in any part of the world.
- 5.8 Trend Micro reserves the right to remove any materials from Shared Portal Area where it reasonably suspects that such material is prohibited by this clause 5 or is otherwise inappropriate. Notwithstanding the foregoing, You acknowledge that Trend Micro has no control over content on Shared Portal Area provided by other Portal Users, and that, in

addition, it does not purport to monitor the accuracy, appropriateness or conformity with the principles outlined in these Terms, of such Uploaded User Content.

- 5.9 You must not link to Shared Portal Area other websites which are indecent or inappropriate, and You must forthwith remove any link if Trend Micro in its discretion so requests.
- 5.10 Materials made available by Trend Micro as part of the Services may include (by way of example only) pictures, videos, promotional or marketing forms, templates and brochures that are accessible and/or made available to You in order to support Your sales and/or servicing of Trend Micro products and services. These materials shall only be accessed and used by You if permitted by Trend Micro and in accordance with the conditions attached by Trend Micro to the materials and in any event only to support the sale and/or promotion of Trend Micro products and services, and for no other purposes. In particular, You shall not change or modify any pre-existing text or elements (whether images, logos, drawings etc) in any templates made available using the Services for Your own marketing campaigns, except that You may include information about Your company, business and Your own campaigns in the designated spaces, provided that at all times (i) the information is lawful and correct; (ii) You have, where relevant, obtained the necessary third party consents and licenses, including but not limited to image rights; and (iii) You do not misrepresent or conceal Your identity and authorship or relationship with Trend Micro.
- 5.11 Upon notification by Trend Micro (via email or otherwise), You shall immediately stop any and all use of any material(s) as specified by Us and if requested by Trend Micro confirm to Trend Micro in writing that You have ceased using the said material.
- 5.12 THE SOFTWARE SERVICES ARE WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE RELEVANT LICENSE AGREEMENT. EXCEPT AS WARRANTED IN THE RELEVANT LICENSE AGREEMENT, TREND MICRO INCORPORATED DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SOFTWARE SERVICES INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.
- 5.13 The Software Services are subject to European and US Government export controls and must not be exported other than in accordance with the European and US Government Export Administration Regulations in force from time to time.
- 5.14 Pricing and availability as set forth on the Partner Portal are subject to change without notice, and may not be available in all countries. The Partner Portal may contain references to Trend Micro products, services and programs that have not been announced in a particular country. These references do not imply that Trend Micro intends to announce or make available such products, services or programs in any particular country. Further, the Partner Portal may contain references to future planned Trend Micro products. Such products are only planned and may not actually be produced. Any planned ship dates mentioned in reference to such future products are estimated ship dates only, and are not guaranteed.
- 5.15 Mention of third party companies and products on the Partner Portal is for informational purposes only and constitutes neither an endorsement nor a recommendation. Except as may be expressly stated otherwise, all third party products must be ordered directly from the vendor, and all licenses and warranties, if any take place between you and the vendor. All persons and companies listed in any examples on the Partner Portal are purely fictitious, and resemblance to existing persons and companies is purely coincidental.

## **6. Participation in Trend Micro Partner Program**

- 6.1 Trend Micro Partner Program. Trend Micro has made certain information available to Trend Micro Partner regarding the Trend Micro Partner Program including the fact that the Trend Micro Program consists of various levels of participation by participating partners. Trend Micro reserves the right, at its sole discretion, to determine the appropriate level of participation for each applicant to the Trend Micro Partner Program. Trend Micro Partner is advised that Trend Micro solely determines Policies and Procedures. Trend Micro reserves the right to modify such Policies and Procedures from time to time and at any time. Once a Trend Micro Partner has been notified of the Policies and Procedure (or modifications thereto) applicable to such participant's appointed level of participation (that is to say, Bronze, Silver, Gold, Platinum, or any other future level of participation as determined by Trend Micro), Trend Micro expects Trend Micro Partner to be in compliance therewith in all material respects at all times, absent which, Trend Micro reserves the right to determine if the participant should be moved to a different level of participation or Trend Micro may take such other action as Trend Micro deems appropriate, including termination of Trend Micro Partner's participation in the Trend Micro Partner Program. Finally, Trend Micro Partner understands and accepts that Trend Micro reserves the right to require certain rights, commitments, and responsibilities of specific appointed Trend Micro Partners that Trend Micro does not offer or require of all other Trend Micro Partners of a specific level of participation.
- 6.2 Appointment. Subject to the terms and conditions of this Agreement, and subject to Trend Micro's acceptance of Trend Micro's application to participate in the Trend Micro Partner Program, Trend Micro appoints Trend Micro Partner as an independent, non-exclusive Trend Micro Partner of all Trend Micro Products via its Authorised Distributor and Trend Micro Partner hereby accepts said appointment at the level of participation (e.g., Bronze, Silver, Gold, Platinum, or any other future level of participation) as advised to it by Trend Micro.. Trend Micro hereby grants to Trend Micro Partner the non-transferable, non-exclusive, revocable right: (i) to market and sell licenses to use the Trend Micro Product(s) to Trend Micro Partner's customers for deployment in the Territory (herein "Customers") pursuant to the terms, conditions, and limitations of the Trend Micro End User License Agreement (the "EULA") that must be accepted by

Customer in order to activate each Trend Micro Product and complete procurement thereof; (ii) to market and sell maintenance, ("Maintenance" as defined in the EULA), to Customers of Trend Micro Product(s); and (iii) to market and sell Trend Micro's premium support services to Customers.

6.3 Limitations On and Exclusions From Appointment/Use of the Partner Portal

- (i) At the Effective Date of Trend Micro Partner's appointment under this Agreement and all times thereafter, Trend Micro Partner must have a current agreement with one or more Authorised Distributors in order to be appointed hereunder and participate in the Trend Micro Partner Program.
- (ii) Trend Micro Partner shall not authorise nor appoint any dealers, representatives, sub-distributors, original equipment manufacturers, value-added Trend Micro Partners, systems integrators, or other third parties, to market, distribute, resell, or offer a license of Trend Micro Product(s).
- (iii) Trend Micro shall retain sole and exclusive ownership of Trend Micro Product(s), including all Intellectual Property Rights (as defined below) therein.
- (iv) Trend Micro Partner acknowledges that it shall acquire no right or license herein to access, install, or utilize any Trend Micro Product for its internal business purposes, whether by contract, implication, estoppel or otherwise, it being understood and agreed that any license to access, install, or utilize Trend Micro Products by Trend Micro Partner shall require a separate written license agreement with respect thereto.
- (v) Trend Micro Partner understands and agrees that, unless Trend Micro hereafter grants specific permission by subsequent written agreement or amendment hereto, Trend Micro Partner is NOT appointed hereunder as a Trend Micro Partner of Trend Micro Products under any master buying contract or schedule (e.g., a blanket or exclusive purchasing contract) to which Trend Micro is now or hereafter a party or beneficiary with any governmental entity or agency in the Territory.
- (vi) Trend Micro is appointed hereunder to resell Trend Micro Products to Customers for their: (A) internal business use; or (B) as part of a bundled offering for Customer to provide third party outsourcing facility or services to their own customers;
- (v) Trend Micro Partners are not entitled to participate in the Trend Micro Partner Program or any of its Incentive Programs, unless they satisfy Trend Micro's criteria in respect of any such Incentive Programs. The rules of any Incentive Program shall be final and binding upon Trend Micro Partner wishing to join or otherwise take part in any Incentive Program and the Trend Micro Partner agrees to abide by any such rules.
- (vi) Participation in the Trend Micro Partner Program shall be limited to Trend Micro Partners, who are: not part of any existing Trend Micro retailer or cataloguer Program; have a trading entity established in the Territory; and abide by the terms of this Agreement and other conditions imposed by Trend Micro from time to time. Trend Micro reserves the right to seek further proof of any Trend Micro Partner's eligibility for membership of any Trend Micro Partner Program or Trend Micro Incentive Program, which the Trend Micro Partner agrees to provide on request at the trend Micro Partner's own expense.
- (vii) Participation in the Trend Micro Partner Program is not available to individuals but only to companies, although Individual Participants shall be entitled to participate in certain Incentive Programs activities once the relevant Portal User has become an Authorised Trend Micro Partner eligible to participate in the Trend Micro Partner Program in accordance with the terms of this Agreement and the rules of the relevant Incentive Programs. For the avoidance of doubt, this Agreement shall apply both to Trend Micro Partners and to each of their nominated representatives participating in the Trend Micro Partner Program and acceptance of the term of this Agreement by You shall be on behalf of Trend Micro Partner and any Individual Participants authorised by You from time to time.

6.4 Trend Micro Product Limitations. Trend Micro Partner acknowledges that Trend Micro asserts that each Trend Micro Product contains or embodies Confidential Information (as defined below) and Intellectual Property of Trend Micro or its suppliers, including, without limitation copyrights, patents and trade secrets, and are protected by trade secret laws, copyright and patent laws, and international treaties. Trend Micro Partner shall not attempt to copy, reverse compile, reverse engineer, modify, translate, or disassemble the software portion of the Trend Micro Product(s), in whole or in part; or authorise any entity or persons to do the foregoing. Trend Micro Product(s) may only be resold complete and intact in the packaging as provided by Trend Micro or as downloaded from Trend Micro's website. Trend Micro Partner agrees not to remove, alter, obscure, or add to any copyright, trademark or other proprietary notice or marking on or within the Trend Micro Product(s).

6.5 Use of Trend Marks. Until this Agreement is terminated and subject to Trend Micro Partner's compliance with this Agreement, Trend Micro hereby grants to Trend Micro Partner a non-exclusive, royalty-free, non-transferable, terminable, personal license to use such Trend Micro trademarks in compliance with notice to Trend Micro Partner by Trend Micro from time to time (collectively "Trend Marks") in promotional materials, advertising and marketing collateral in compliance with Trend Micro's then-current published usage guidelines or as Trend Micro may otherwise authorise from time to time in writing. All rights not expressly granted herein are reserved by Trend Micro. Trend Micro Partner acknowledges Trend Micro's sole ownership of the Trend Marks, and all associated goodwill. Nothing in the Agreement or in the performance thereof, or that might otherwise be implied by law, shall operate to grant Trend Micro Partner any right, title, or interest in the Trend Marks other than as specified in the limited license grant herein. Trend Micro's use of the Trend Marks shall inure solely to the benefit of Trend Micro. Trend Micro Partner agrees to correct any deficiencies in its use of the Trend Marks as promptly as is commercially reasonable upon receipt of notice from Trend Micro. Notwithstanding anything contained herein to the contrary, Trend Micro reserves the right in its sole

discretion to terminate or modify this grant for use of the Trend Marks at any time. Trend Micro Partner agrees not to take any action inconsistent with such ownership and to cooperate, at Trend Micro's request and expense, in any action (including the conduct of legal proceedings) which Trend Micro deems necessary or desirable to establish or preserve Trend Micro's exclusive rights in and to the Trend Marks. Trend Micro Partner agrees that it will not: (a) challenge Trend Micro's ownership or rights to use Trend Marks or adopt, register or attempt to register any trademarks, service marks, logos, or trade names which may be confusingly similar to Trend Marks or in such a way as to create combination marks with the Trend Marks; or (b) use any Trend Marks in any manner deemed by Trend Micro as damaging to its goodwill. Trend Micro Partner shall immediately cease all use of the Trend Marks authorised under this Agreement upon termination of this Agreement.

- 6.6 Use of Trend Micro Partner Marks. Until this Agreement is terminated and subject to Trend Micro's compliance with Trend Micro Partner's then-current trademark usage guidelines (if any) and this Agreement, Trend Micro Partner hereby grants to Trend Micro a non-exclusive, royalty-free, non-transferable, terminable, personal license to use Trend Micro Partners trademarks (collectively "Trend Micro Partner Marks") in connection with the Trend Micro Partner Program or as Trend Micro Partner may otherwise authorise from time to time in writing. All rights not expressly granted herein are reserved by Trend Micro Partner. Trend Micro acknowledges Trend Micro Partner's sole ownership of the Trend Micro Partner Marks, and all associated goodwill. Nothing in the Agreement or in the performance thereof, or that might otherwise be implied by law, shall operate to grant Trend Micro any right, title, or interest in the Trend Micro Partner Marks other than as specified in the limited license grant herein. Trend Micro's use of the Trend Micro Partner Marks shall inure solely to the benefit of Trend Micro Partner. Trend Micro agrees to correct any deficiencies in its use of the Trend Micro Partner Marks as promptly as is commercially reasonable upon receipt of notice from Trend Micro Partner. Trend Micro Partner reserves the right in its sole discretion to terminate or modify this grant for use of the Trend Micro Partner Marks at any time. Trend Micro agrees not to take any action inconsistent with such ownership and to cooperate, at Trend Micro's request and expense, in any action (including the conduct of legal proceedings) which Trend Micro Partner deems necessary or desirable to establish or preserve Trend Micro Partner's exclusive rights in and to the Trend Micro Partner Marks. Trend Micro agrees that it will not: (a) challenge Trend Micro Partner's ownership or rights to use Trend Micro Partner Marks or adopt, register or attempt to register any trademarks, service marks, logos, or trade names which may be confusingly similar to Trend Micro Partner Marks or in such a way as to create combination marks with the Trend Micro Marks; or (b) use any Trend Micro Partner Marks in any manner deemed by Trend Micro Partner as damaging to its goodwill. Trend Micro shall immediately cease all use of the Trend Micro Partner Marks authorised under this Agreement upon termination of this Agreement.
- 6.7 Non-Exclusive Relationship. Trend Micro reserves the right from time to time and in its sole discretion, inside or outside the Territory, and nothing herein shall be construed to prevent or limit Trend Micro's right to: (i) engage in the direct and indirect marketing, distribution, and sale of Trend Micro Products/Maintenance including premium support services in the Territory with no restrictions on Trend Micro's right to increase or decrease the number of Trend Micro Partner Program Trend Micro Partners or other authorised Trend Micro Partners, distributors, OEMs, systems integrators, VARs and managed service providers, or other third parties via any other channel of distribution; or (ii) promote, market, sell, distribute and/or service Trend Micro Products using Trend Micro's own personnel, all of the foregoing without any obligation or liability to pay Trend Micro Partner a fee, commission, or other compensation of any kind or nature.
- 6.8 Trend Micro Product Changes. In accordance with its policies, Trend Micro reserves the right to, and may unilaterally change and/or discontinue the publication, distribution, or licensing of any or all Trend Micro Product(s) at any time.

## **7. Trend Micro Partner Obligations**

- 7.1 Sales Obligations. Trend Micro Partner agrees to the following: (i) Trend Micro Partner will promote, market, and sell Trend Product(s) to potential Customers in the Territory in accordance with this Agreement; (ii) Trend Micro Partner shall solely determine the price and payment terms for the Trend Micro Product(s) as between Trend Micro Partner and Customer; and (iii) Trend Micro Partner will (x) conduct business in a manner that reflects favourably on Trend Micro Product(s) and the good name, goodwill, and reputation of Trend Micro; (y) avoid deceptive, misleading, illegal, or unethical practices; and (z) make no representations or warranties concerning the capabilities, functionality, performance or other characteristics of the Trend Micro Product(s) other than those which are consistent in all material respects with, and do not expand the scope of, the user documentation for the Trend Micro Product(s) as made available by Trend Micro from time to time.
- 7.2 Marketing Obligations. Trend Micro Partner shall use reasonable efforts to accurately explain the Trend Micro Product(s) to prospective purchasers, and upon request by Trend Micro, Trend Micro Partner shall provide available feedback to Trend Micro regarding the prospective customer's concerns and reactions, if any, relating to its purchase of any Trend Micro Product(s).
- 7.3 Incentive Programs. In the event that Trend Micro, at its sole discretion, offers Incentive Program(s), Trend Micro Partner shall undertake and implement each Incentive Program in a timely and professional manner and in accordance with all requirements and conditions set forth in each notification to Trend Micro Partner of an Incentive Program. In the event Trend Micro Partner is notified of a Incentive Program that Trend Micro Partner finds unacceptable, Trend Micro Partner shall immediately notify Trend Micro of Trend Micro Partner's objections and NOT accept any funds with respect thereto, it being understood and agreed that Trend Micro Partners acceptance of all or any portion of the funds

offered in such notice of Incentive Program, Trend Micro Partner shall be deemed for all purposes to have agreed to undertake and perform the Incentive Program in accordance with the requirements and conditions thereof without exception or reservation. Trend Micro Partner acknowledges and agrees that the each Incentive Program is subject to Trend Micro's approval and acceptance of Trend Micro Partner's performance thereof and each Incentive Program may be terminated or discontinued by Trend Micro at any time without reason. In order to receive any incentive payments, bonuses or rebates from Trend Micro for any such Incentive Program, Trend Micro Partner will be required to complete a payment detail form from Trend Micro which accuracy for completion of the payment details will rest with the Trend Micro Partner and any errors shall be the responsibility of the Trend Micro Partner.

## **8. Authorised Distributor; Ordering; Returns.**

- 8.1 **Authorised Distributor - Relationship.** Authorised Reseller agrees to purchase all Trend Micro Products and Maintenance for resale to Customers in connection herewith only from and through any of Trend Micro's Authorised Distributors as determined by Trend Micro Partner in Trend Micro Partner's sole discretion and, as such, Authorised Reseller will not order directly from Trend Micro which will in no event accept purchase orders from or sell directly to Trend Micro Partner. A Trend Micro Partner (excepting Authorised Resellers) may purchase all Trend Micro Products and Maintenance for resale to Customers in connection herewith from and through any of Trend Micro's Authorised Distributors as determined by Trend Micro Partner in Trend Micro Partner's sole discretion and, as such, but subject to having a direct contract for purchase with Trend Micro may order directly from Trend Micro which will accept purchase orders from or sell directly to Trend Micro Partner in such circumstances. Trend Micro Partner acknowledges that each Authorised Distributor is an independent contractor and in no event or circumstance will any Authorised Distributor now or hereafter be deemed a joint venturer, partner, fiduciary, agent, or employee of Trend Micro and the Parties agree that nothing in this Agreement is intended or shall be construed to create any such relationship between Trend Micro and any Authorised Distributor. The Parties agree that in no event or circumstance now or hereafter arising will any Authorised Distributor be authorised, permitted, or otherwise be deemed to have a right to create any binding obligation, responsibility, duty, liability, warranty, guarantee, or any otherwise contract for or act on behalf of Trend Micro or waive or renounce any right of Trend Micro. For the avoidance of doubt, any agreement which Trend Micro Partner may enter into with any Authorised Distributor will not be binding on Trend Micro or otherwise modify, add to, amend, or supersede any term or condition set forth in this Agreement even if Trend Micro has knowledge thereof.
- 8.2 **Use of Any Authorised Distributor.** Nothing in this Agreement will prohibit Trend Micro Partner from purchasing Trend Micro Products/Maintenance from any or all Authorised Distributors after the Effective Date hereof provided that Trend Micro Partner is solely responsible for its obligations to each such Authorised Distributor, including any payment obligations. Trend Micro Partner understands and agrees that purchases made by Trend Micro Partner from any third party other than an Authorised Distributor will NOT be covered hereby or be recognised as sales made in accordance with the Trend Micro Partner Program.
- 8.3 **Ordering.** Trend Micro Partner will order all Trend Micro Products (and an increase in the licensed capacity of one or more Trend Micro Products) and renewal Maintenance (if applicable) therefor directly from an Authorised Distributor Or Trend Micro consistent herewith. Orders must be sent by Trend Micro Partner to and agreed with an Authorised Distributor with a reference to this Agreement (if required by such Authorised Distributor) at such prices, discounts, and on such payment terms as agreed solely by Trend Micro Partner and an Authorised Distributor. Trend Micro Partner acknowledges that if an order for Trend Micro Products is placed with an Authorised Distributor by Trend Micro Partner, the Authorised Distributor may then place an order with Trend Micro for Trend Micro Products and renew Maintenance as requested by Trend Micro Partner. Trend Micro Partner understands that all orders issued by Authorised Distributor are subject to acceptance or rejection by Trend Micro at its discretion and, further, Trend Micro informs Trend Micro Partner that all purchase orders submitted by Authorised Distributor hereunder are non-cancellable. All payments by Trend Micro Partner for Trend Products and renewal Maintenance will be made directly to the Authorised Distributor and never to Trend Micro.
- 8.4 **Returns.** All returns from Trend Micro Partner are through an Authorised Distributor and pursuant to its policies. Only an Authorised Distributor can request the return of any Trend Micro Product or service sold by such Authorised Distributor. Trend Micro Partners and Customers cannot request a return from Trend Micro since such was not purchased directly from Trend Micro.

## **9. Prices and Payment; Audit**

- 9.1 **Pricing; Payment.** Notwithstanding anything that may be implied or contained herein to the contrary, Trend Micro Partner shall have the sole and exclusive right at its sole discretion to establish the prices and payment terms at which it offers and/or sells Trend Micro Products (and Maintenance therefor) to each Customer as well as the prices/payment terms with respect thereto agreed by Authorised Distributor and Trend Micro Partner and, further, Trend Micro Partner covenants and agrees as a material obligation hereunder, that Trend Micro Partner will never disclose to or otherwise provide Trend Micro with any information, purchase order, other document that contains any such prices and payment terms. It is understood and agreed that no employee or officer of Trend Micro has any right or authority to act in contravention of, or inconsistent with, this section and in the event Trend Micro Partner becomes aware of any attempt of any such employee or officer to take any action that would be inconsistent with this Section, Trend Micro Partner



agrees to immediately report such action to Trend Micro's legal department. The Parties agree that Trend Micro's obligation to provide Trend Products and renew Maintenance ordered in accordance herewith is expressly subject to and conditioned upon Trend Micro Partner making payment to, and as agreed with, the Authorised Distributor providing the foregoing to Trend Micro Partner. The Parties agree that any failure by Trend Micro Partner to pay Authorised Distributor as agreed by Trend Micro Partner and Authorised Distributor is a material breach of this Agreement and constitutes grounds for termination for cause of Trend Micro Partner for material breach hereof.

- 9.2 Audit of Records. If and only in the event Trend Micro provides any Incentive Program (as defined above) funds to Trend Micro Partner, Trend Micro Partner shall maintain legible, true, accurate, and complete records containing all data and information reasonably required for verification of compliance with Trend Micro's directives and restrictions for the use and expenditure of such Incentive Program funds. Trend Micro shall have the right, no more than once per calendar year upon at least then twenty (20) days prior notice, to direct its independent auditors to audit and analyse the relevant records of Trend Micro Partner during normal business hours related to such Incentive Program funds and with minimal disruption to Trend Micro Partner's business. Trend Micro pays all expenses associated with the performance of the audit. The auditor must not be a competitor to Trend Micro Partner in connection with the service provided by the Trend Micro Partner related to the scope of this Agreement. During the performance of the audit, the auditor must be accompanied by staff from Trend Micro Partner. The auditor must be subject to confidentiality and must sign an NDA in connection with the audit. An audit shall not include access to internal policies, IT-systems or any other information not relating directly to this Agreement.

## 10. Term and Termination

- 10.1 You shall become a Registered Portal User and Trend Micro Partner following formal acceptance by you of this Agreement in accordance with the "click accept" mechanism set out on the Partner Portal.
- 10.2 Unless termination as set forth in this Agreement or permitted under applicable laws, this Agreement shall continue in force indefinitely.
- 10.3 A Trend Micro Partner may terminate its relevant Registered Portal User's membership of the Trend Micro Partner Program forthwith by sending written notice to Trend Micro by email to [emea\\_partner\\_program@trendmicro.co.uk](mailto:emea_partner_program@trendmicro.co.uk).
- 10.4 Trend Micro reserves the right to terminate any Trend Micro Partner's status as a Trend Micro Partner at any time by sending written notice to the Trend Micro Partner by email, fax or letter thirty (30) days prior to the effective date of termination, and without incurring any liability to the Trend Micro Partner or its employees. Trend Micro reserves the right to terminate a Trend Micro Partner's status as a Trend Micro Partner immediately for cause.
- 10.5 Trend Micro reserves the right to terminate or modify the Trend Micro Partner Program at any time without notice, at its sole discretion and without incurring any liability to the Portal User, the Trend Micro Partner and/or their representatives and/or agents and/or employees.
- 10.6 Effect of Termination. Upon termination of this Agreement, Trend Micro Partner shall immediately cease from further marketing, distribution or resale of the Trend Micro Product(s) and from further use of Trend Micro's Confidential Information or Intellectual Property including Trend Marks (collectively "Trend Micro Property"), and all rights granted to Trend Micro Partner hereunder shall terminate. All of the EULAs granted for the Trend Micro Product(s) during the term of this Agreement shall survive termination of this Agreement in accordance with their respective terms. Upon termination, Trend Micro may continue to use the Customer information provided to it by Trend Micro Partner or Customer consistent with the terms set forth in Section 13.6.

## 11. Liability

- 11.1 By participating, Trend Micro Partner and all Trend Micro Partners agree to accept as final and binding any and all decisions made by Trend Micro and its appointed agent(s) on all matters relating to the Partner Portal including all matters relating to the Trend Micro Partner Program, Services and Content.
- 11.2 Trend Micro shall not be held liable for any direct or indirect loss (including loss of profit whether direct or indirect) or any injury, loss or damage of any kind suffered by Trend Micro Partner or any Portal User or its representatives (including if caused by the negligence of Trend Micro) as a result of participation in the Trend Micro Partner Program, any Trend Micro Partner Program or Incentive Program and/or use of the Partner Portal. However, these limitations on liability shall not apply to any liability the exclusion or limitation of which is expressly prohibited by law or statute. Trend Micro Partner and their representatives acknowledge that among the benefits available to Registered Portal Users may be products or services, made available by third party suppliers, involving individual hazard or risk, and that Trend Micro shall have no liability to Trend Micro Partner or their representatives in connection with participation in any such Programs or Trend Micro Partner Program/Incentive Programs; and Trend Micro Partner and their nominated representatives release Trend Micro from any such liability.
- 11.3 Trend Micro shall not be liable to Trend Micro Partner for its use of the Partner Portal or its employees for any changes to or discontinuance of the Trend Micro Partner Program, any Incentive Program or if any benefit associated with or made available through the Partner Portal or the Trend Micro Partner Program becomes unavailable.
- 11.4 Trend Micro disclaims to the extent permitted by law all warranties or conditions, expressed or implied, including without limitation the warranties or conditions of satisfactory quality or fitness for purpose and those that may arise

from a course of dealing or usage of trade in connection with the operation of the Trend Micro Partner Program, any Incentive Program and the Partner Portal.

- 11.5 Trend Micro Partner's use of the Partner Portal is at Trend Micro Partner's sole risk. The Partner Portal and its content, are delivered on an "as is" and "as available" basis. Trend Micro expressly disclaims all warranties of any kind, whether express or implied in relation to Trend Micro Partner's use of the Partner Portal. Without prejudice to the generality of the foregoing, Trend Micro makes no warranty that the Partner Portal or any related services, offered on the Partner Portal will be error free and/or uninterrupted, and gives no warranty of satisfactory quality, fitness for a particular purpose or non-infringement. Trend Micro reserves the right to modify the Partner Portal and the product and service information contained on the Partner Portal without notice.
- 11.6 Trend Micro does not guarantee that the Partner Portal will be compatible with all or any hardware and software, which may be used by Trend Micro Partner or any Individual Participant. Trend Micro does not guarantee that the Partner Portal will be available all the time or at any specific time. Trend Micro reserves the right to withdraw or modify the Partner Portal or any products and/or services on the Partner Portal at any time without notice to Trend Micro Partner or any Portal User or any Individual User.

## **12. Indemnity**

- 12.1 Trend Micro Partner shall indemnify and hold Trend Micro harmless from and against any and all claims, damages, losses, liabilities and expenses, including reasonable attorney's fees and expenses, arising from or related to any breach by Trend Micro Partner of any of its obligations mentioned under this Agreement. EXCEPT WITH RESPECT TO CLAIMS BASED ON FRAUD OR WILLFUL MISCONDUCT, INFRINGEMENT OF TREND MICRO'S INTELLECTUAL PROPERTY RIGHTS ANY DAMAGES OR EXPENSES RELATING TO BODILY INJURY OR DEATH OF ANY PERSON OR DAMAGES TO REAL AND/OR TANGIBLE PERSONAL PROPERTY DURING THE TERM OF , THIS AGREEMENT, TREND MICRO PARTNER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AN AMOUNT GREATER THAN 125.000 EURO.
- 12.2 Trend Micro will defend each IP Claim at its cost and indemnify Trend Micro Partner from each IP Claim if and only if such IP Claim is asserted and brought in the Territory, subject to the conditions, qualifications and limitations in this Section 12.2. Trend Micro will pay those costs and damages finally awarded against Trend Micro Partner in any such IP Claim that are specifically attributable to such IP Claim or those amounts agreed by Trend Micro in a monetary settlement of such IP Claim. The obligation of Trend Micro for any IP Claim is subject to and conditioned on Trend Micro Partner giving Trend Micro: prompt written notice of any such IP Claim; sole control the defense and settlement of such IP Claim; and Trend Micro Partner fully cooperates (at Trend Micro's expense) with Trend Micro in the defense and all related settlement negotiations. Trend Micro shall have no liability for any settlement or compromise made without its consent, which may be withheld at its sole and absolute discretion. Trend Micro shall have no liability for any IP Claim if such IP Claim arises out of, based on, or related to any of the following circumstances or event: (i) modifications made to the Trend Product(s), provided that the unmodified Trend Micro Product(s) are non-infringing; (ii) use or combination of the Trend Product(s) with third party products, processes, methods or technology not recommended in writing by Trend Micro, provided that the Trend Micro Product(s) alone are non-infringing; or (iii) any IP Claim that the Trend Micro Product(s) infringe any Intellectual Property Right in which Trend Micro Partner or any affiliate of Trend Micro Partner has an interest or licenses. Upon notice of an alleged IP Claim, or upon Trend Micro's conclusion that such a IP Claim is likely, Trend Micro shall have the right, at its option, to obtain the right for Trend Micro Partner to continue to sell of the Trend Micro Product(s), substitute other computer software/service with similar operating capabilities, or modify the Trend Micro Product(s) so that they are no longer subject to such IP Claim. If none of the above options are commercially reasonable in Trend Micro's sole opinion, Trend Micro may terminate this Agreement or terminate this Agreement with respect to the affected Trend Micro Product(s) for its convenience in accordance with Section 10.3 above, and the Parties agree that such action is not a breach hereof by Trend Micro. This Section states Trend Micro's sole and exclusive obligation and liability to Trend Micro Partner, and Trend Micro Partner's sole and exclusive right and remedy against Trend Micro, for any worldwide IP Claim. For purposes of this Agreement, the term "IP Claim" means any claim, threat, allegation, suit, action, or proceeding asserted and brought against Trend Micro Partner by a third party alleging that one or more Trend Products sold in accordance herewith infringes or misappropriates any Intellectual Property Right of such third party.

## **13. Confidentiality, Data Protection**

- 13.1 You shall be responsible for the disclosure within Your organisation of individual user name and password details issued to an Registered Portal User by Trend Micro and will be responsible for any transactions undertaken with those individual user name and password details. If any user name and password is disclosed to any unauthorized third party, Trend Micro reserves the right to cancel Your membership of the Program outright without liability to Trend Micro. Trend Micro Partner agrees to comply with any other security procedures identified on the Partner Portal in connection with their use of the Partner Portal or their participation in the Program.
- 13.2 In addition, You and Your representatives acknowledge that these Terms, the Partner Portal, Content and all related documents or information are confidential information of Trend Micro, which You and Your employees shall not disclose to any third party (without the prior written consent of Trend Micro).

- 13.3 You and Your representatives acknowledge that Trend Micro and its agents shall collect their Personal Data to operate the Partner Portal, any Partner Portal Scheme and the Program pursuant to the GDPR and other relevant data privacy and related legislation. By participating in any Partner Portal Scheme and/or the Program, You and Your representatives consent to the collection and use of their Personal Data by Trend Micro and its agents and to the transfer of such information outside the European Economic Area for purposes of processing related to the management of any Portal Partner Scheme and the Program by Trend Micro and its agents as set out in the Privacy Notice and Data Processing Addendum.
- 13.4 Trend Micro and its agents shall only use such Personal Data in accordance with the Privacy Notice. Personal Data may also be used by Trend Micro occasionally to notify You and Your representatives of Trend Micro product and Program or Partner Portal Scheme announcements. You and Your representatives are entitled to access and rectify their personal information on the 'My Account' section of the Partner Portal.
- 13.5 Any comments or materials sent to Trend Micro, including feedback data, such as questions, comments, suggestions and any other response shall be deemed to be non-confidential. Trend Micro shall have no obligation of any kind with respect to such response, and Trend Micro shall be free to use, reproduce, distribute and publicly display such comments and materials without limitation. Trend Micro shall also be free to use any ideas, concepts, know-how or techniques contained in such response for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products incorporating such ideas, concepts or techniques.
- 13.6 The Parties agree that Trend Micro may use information regarding Customers provided by Trend Micro Partner or others regarding Customers, even if designated as Confidential Information, and disclose such information to third parties without restriction, compensation of Trend Micro Partner, or Trend Micro Partner's prior consent for the purposes of: (i) protecting or maintaining Trend Micro's Intellectual Property Rights in the Trend Micro Product(s); (ii) determining and ensuring that each Customer complies with the terms and conditions of the EULA; (iii) providing Maintenance and technical support for the Trend Micro Product(s) to each Customer; or (iv) in the event this Agreement is terminated by either Party for any reason or no reason, such information may be used by Trend Micro to ensure that each Customer purchases renewal Maintenance of Trend Micro Products.

#### **14. Notices**

- 14.1 Any notice required or permitted to be given by either Party to the other under this Agreement shall be via e-mail addressed to the Trend Micro Partner or Trend Micro (as applicable) at the e-mail address supplied by the relevant Party or (in either case) such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice. Trend Micro may also give notice to a Registered Portal User via the Partner Portal.
- 14.2 A notice is deemed to have been served the Business Day after sending and providing the sender can show satisfactory transmission of the email. A notice given by Trend Micro via the Partner Portal shall be deemed to have been served the Business Day after such notice is uploaded to the Partner Portal.

#### **15. Liability for Taxes**

- 15.1 Each Trend Micro Partner (and each of its representatives) participating in the Trend Micro Partner Program/ Incentive Program or Service which bestows any benefit upon the Portal User is responsible for payment of all taxes, and social security contributions, including any form of sales, purchase or value-added tax and customs duties, which may be levied by relevant governmental authorities in relation to any benefit obtained by the Portal User or any Individual Participant, as a direct or indirect result of a Portal User. Neither Trend Micro nor any of its affiliates, representatives, or appointed agents shall be liable for any such taxes and duties at any time, and Portal Users shall indemnify Trend Micro against any such liability.
- 15.2 In the event of Trend Micro being required by any authorities to furnish annual returns of any benefits obtained by Portal Users or their representatives, Trend Micro will always comply to the fullest extent with any such requirement and shall not incur liability to any Trend Micro Partner and/or Portal User or its representatives by doing so. In this connection, Portal Users and their representatives are obliged to extend their fullest co-operation to Trend Micro, or its appointed agent, in order for Trend Micro to fulfil its obligations to the said authorities.

#### **16. Warranty; Disclaimer**

- 16.1 Authority. Each Party hereto represents to the other Party that: (i) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement; (ii) the electronic execution, delivery, and performance of this Agreement by it have been duly authorised by all necessary and appropriate corporate resolution or other action; (iii) its signatory by electronic execution has been, and is on the date of this Agreement, duly authorised by all necessary and appropriate resolution or other action to execute this Agreement and such Party has duly and validly executed and delivered this Agreement; and (iv) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions hereof.
- 16.2 **DISCLAIMER OF WARRANTY.** EXCEPT FOR THE EXPRESS WARRANTY ABOVE, TREND MICRO MAKES NO WARRANTIES OF ANY KIND OR NATURE TO TREND MICRO PARTNER, EXPRESS OR IMPLIED, and to the maximum extent permitted by Applicable Law, Trend MICRO expressly disclaims all representations and warranties (whether statutory, express, or implied) regarding: (i) this Agreement; (ii) Trend MICRO's performance or non-performance hereunder; (iii) TREND

MICRO Products; and (iv) Maintenance. Trend MICRO expressly disclaims any warranties of SATISFACTORY QUALITY, fitness for a particular purpose, title, accuracy and non-infringement of third party Intellectual Property Rights, or otherwise arising from a STATUTE, CUSTOM, usage or trade practice, course of dealing or performance, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER. NO PERSON (INCLUDING, WITHOUT LIMITATION, EMPLOYEES OF TREND MICRO) IS AUTHORISED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE TREND PRODUCT(S) OR THE MEDIA ON WHICH THEY ARE SUPPLIED OTHER THAN AS PROVIDED IN THE EULA. TREND MICRO PARTNER SHALL MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF TREND MICRO.

## **17. General Provisions**

- 17.1 Trend Micro reserves all of its legal rights and remedies, provided under this Agreement, or otherwise, in the event that it discovers any unauthorised access to the Partner Portal or other Trend Micro sites, or any abuse or impropriety related to the Program.
- 17.2 By providing links to third party websites, Trend Micro is not endorsing the material on or the operator of such sites, and Trend Micro accepts no liability for the quality of the services provided or the material on such sites. Trend Micro makes no representations about such websites and has no control over the content of such web sites. The legal compliance of such sites, and all product or service related obligations or liabilities shall be the responsibility of the third party site operator. The Trend Micro Partner and/or Individual Participant (as applicable) is responsible for checking the terms and conditions and the privacy policy on any other such website, which they visit.
- 17.3 Nothing in this Agreement shall constitute or be deemed to constitute a partnership between Trend Micro and any Trend Micro Partner.
- 17.4 In the event of any conflict between this Agreement and the Trend Micro registration form, this Agreement shall prevail.
- 17.5 The parties to these Terms do not intend that any of its Terms will be enforceable by any person not a party to it, including but not limited to an Individual Participant. These Terms may only be enforced by the Trend Micro Partner on behalf of the relevant Individual Participant.
- 17.6 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement shall be governed by the law of the Republic of Ireland, without reference to its conflict of law principles. The courts of the Republic of Ireland shall have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with this Agreement, whether contractual or non-contractual. The parties irrevocably agree to submit to that jurisdiction.
- 17.7 Trend Micro reserves the right to modify this Agreement from time to time and such modification shall be effective immediately upon posting of a modified agreement without separate notification to You. Accordingly Your continuing to remain as a Portal User and using Services and/or services available through the Partner Portal shall be deemed to be Your acceptance of the modified Terms.
- 17.8 Trend Micro's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
- 17.9 Clauses 6,7,8,9,10,11,12,13,14,15,16, 17 and 18 and any other clause which by its nature should survive termination or expiration of these Conditions shall survive such termination.
- 17.10 This Agreement may not be assigned by Trend Micro Partner, by contract, operation of law, or otherwise, to any other person, persons, firms, or corporations without the express written approval of Trend Micro, which consent may be withheld at the discretion of Trend Micro. Any act in derogation of the foregoing shall be void and of no effect.
- 17.11 Neither Party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, failure of suppliers to perform, sustained power failures, earthquakes, or other disasters.
- 17.12 No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorised representative of each Party to this Agreement. No provisions in either Party's standard business forms employed will apply to this Agreement even if accepted or acknowledged by the other Party.
- 17.13 No delay or failure in exercising any right hereunder and no partial or single exercise thereof shall be deemed to constitute a waiver of such right or any other rights hereunder. No consent to a breach of any express or implied term of this Agreement shall constitute consent to any prior or subsequent breach.
- 17.14 In the event any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable, and the other provisions of this Agreement will remain in full force and effect.

17.15 The terms “Intellectual Property” or “Intellectual Property Rights” shall mean, on a worldwide basis, any and all tangible and intangible: (i) rights associated with works of authorship and literary property, including copyrights, moral rights of an author of a copyrightable work (including any right to be identified as the author of the work or to object to derogatory treatment of the work), and mask-work rights; (ii) trademarks, service marks, logos, trade dress, trade names, whether or not registered, and the goodwill associated therewith; (iii) rights relating to know-how or trade secrets, including ideas, concepts, methods, techniques, inventions (whether or not developed or reduced to practice); (iv) patents, designs, algorithms and other industrial property rights; (v) rights in domain names, universal resource locator addresses, telephone numbers (including toll free numbers), and similar identifiers; (vi) all other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vii) all registrations, initial applications (including intent to use applications), renewals, extensions, continuations, divisions, or reissues of any of the foregoing now or hereafter in force (including any rights in any of the foregoing).

## 18. Compliance with Applicable Laws; Export/Import Laws; Corrupt Practices Laws.

18.1 Party agrees that it will: (1) comply with all Applicable Laws; and (2) identify, procure, and maintain any permits, certificates, approvals, consents, and inspections that may be required or advisable by Applicable Laws in connection with such Party’s performance of its obligations and/or exercise of its rights hereunder. If either Party at any time is in breach of or non-compliance with the foregoing agreement set forth in this Section, such Party will promptly do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any and all Applicable Laws. For purposes of this Agreement, “**Applicable Laws**” means all laws of the Republic of Ireland, EU regulations and local laws, statutes, ordinances, regulations, rules, treaties, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters, and other official releases applicable from time-to-time and at any time to a Party’s performance of its obligations and exercise of its rights hereunder, including, without limitation, any data privacy, trans-border data flow or data protection Applicable Laws governing such Party’s possession, transmission, or use of any personally identifiable information.

Applicable Law now or hereafter in effect that requires a license to, or otherwise prohibit the, export, re-export, import, or diversion of certain Trend Products and technology for certain uses and/or to certain persons. As Trend Micro Partner of Trend Products, Trend Micro Partner covenants and agrees as a material obligation of this Agreement that Trend Micro Partner will not, and will not permit, export, re-export, divert, or import the Trend Products without first securing any necessary U.S.A. and/or foreign government licenses. If either Party at any time is in breach of or non-compliance with any warranty and agreement set forth in this Section, such Party will promptly do all things and take all actions as may be necessary or appropriate to cure and correct any breach or non-compliance with any and all Applicable Laws and will pay any and all costs, expenses, fines, penalties, and interest payable to any governmental authority or imposed under Applicable Laws with respect thereto notwithstanding anything to the contrary set forth herein.

18.3 Trend Micro Partner represents and warrants that it is familiar with and agrees to comply with all Applicable Laws that apply from time to time to the marketing, promotion, and sale of Trend Products and to the performance of Trend Micro Partner hereunder, which may include, without limitation and all other international and domestic anti-bribery/corrupt practices laws applicable to the Trend Micro Partner’s performance hereunder. With respect to Product or this Agreement, neither Trend Micro Partner nor any of its agents or employees may offer, pay, promise or authorize any direct or indirect payments of anything of value for the purpose of obtaining business to any government official (including any person holding an executive, legislative, judicial, or administrative office, whether elected or appointed, or any official or employee of any public international organisation.



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