

**IMPORTANT: READ CAREFULLY. USE OF TREND MICRO SOFTWARE AND SERVICES BY BUSINESS AND OTHER ENTITIES IS SUBJECT TO THE FOLLOWING LEGAL TERMS AND CONDITIONS**

## **Trend Micro License Agreement**

**Trial and Paid Use License - Enterprise and SMB Software and Services**

**Date: November 2011**

**English/Multi-country**

1. **Scope.** This Agreement applies to all Trend Micro software ("Software"), services sold as standalone products ("Standalone Services") and service components of Software ("Service Components") sold to small and medium business ("SMB") and large enterprises ("Enterprise"). Standalone Services and Service Components are collectively referred to as "Services". This Agreement shall also apply to Trend Micro Encryption for Email ("TMEE") for personal use. The term "Software" as used herein shall include TMEE. Professional or expert service offerings are governed by other agreements.

2. **Binding Contract.** This Trend Micro License Agreement ("Agreement") is a binding contract between Trend Micro Incorporated or a licensed affiliate ("Trend Micro") and the legal entity that will be using Trend Micro Software or Services on a paid or trial use basis or individuals who will be using TMEE on a personal use basis. An employee or other agent, including a reseller or contractor which installs or registers Software or Services, of this entity ("Representative") must accept this Agreement on behalf of the entity before the Software or Services may be used. Individuals who install or register TMEE for personal use must also accept this Agreement before using TMEE. Entities whose Representative has validly accepted this Agreement or individuals who have accepted this Agreement are referred to as "You." Please print this Agreement and save a copy electronically.

**NOTE:** SECTION 21 OF THIS AGREEMENT LIMITS TREND MICRO'S LIABILITY. SECTIONS 8, 17, 18 AND 19 LIMIT OUR WARRANTY OBLIGATIONS AND YOUR REMEDIES. SECTION 10 SETS FORTH IMPORTANT CONDITIONS OF USE FOR SOFTWARE AND SERVICES. SECTION 14 TELLS YOU WHAT INFORMATION WE COLLECT FROM THE SOFTWARE YOU INSTALL. READ THESE SECTIONS CAREFULLY BEFORE ACCEPTING THE AGREEMENT.

3. **Agreement Acceptance.** (a) If the Software is downloaded, or the Service initiated from, our website (for paid, trial or personal use purposes), this Agreement will be accepted and a contract formed when a Representative or an individual selects an "I Accept", "OK" or "Yes" button or box below prior to download or installation. (b) If the Software is installed from a Compact Disc (CD)/DVD accompanying a product package, this Agreement will be deemed accepted and a contract formed when a Representative or an individual breaks the seal on the CD/DVD jacket/case. (c) If an entity is already using an evaluation or other version of the Software or Service, it shall be deemed to accept the Agreement as a paid user when a Representative or an individual enters the paid use product registration key or activation code (whichever is first).

4. **Agreement Rejection.** If an individual is not authorized to accept this Agreement on behalf of the entity, or a Representative or an individual does not agree with any term or condition of the Agreement, select the "I Do Not Accept" or "No" button or box below and/or do not input the registration key or activation code, break the seal on the CD/DVD jacket/case or use the Software or Service(s). IF ANY ENTITY DOES NOT AGREE WITH ANY TERM OF THIS AGREEMENT AND HAS PAID FEES BEFORE RECEIVING NOTICE OF THIS AGREEMENT, IT MAY CONTACT ITS SUPPLIER WITHIN 30 DAYS OF RECEIPT OF THE ORDER CONFIRMATION OR LICENSE CERTIFICATE FOR A REFUND.

5. **Applicable Agreement.** When installing the Software or initiating a Service, You may be prompted to accept the same, another version of, or a third party end user license agreement. The first version of a "Trend Micro License Agreement" You validly accept shall take precedence notwithstanding the terms contained in any other end user license agreement You may have been prompted to accept – unless the Software or Services are subject to an existing written contract or agreement signed by Trend

Micro, in which case, the signed contract shall take precedence. Updates made available to You will be subject to the terms of this Agreement. Updates will replace previously licensed parts of the Software or Services. Some Major and Minor Product Updates may also require You to accept additional or different license terms as a condition of use. Otherwise, this Agreement and Trend Micro's written specifications regarding Maintenance and licensed number of Computers, Virtual Machines or Users, as applicable, will supersede any prior or contemporaneous written or oral agreements, representations or understandings. Modifications to this Agreement must be agreed to in writing by Trend Micro.

6. **Applicable Terms and Definitions.** *Paid Use Licenses:* If You are Paid User, Sections 1 through 7 and 9 through 31 apply to You. *Trial or Personal Use Licenses:* If You are a "trial user" or "personal user" Sections 1 through 8, 10, 12, 14, 15, 16, 20, 21, 23 through 28, 30 and 31 of this Agreement apply to You.

**"Computer"** means personal computers, workstations, handheld personal computers, cellular or mobile telephone or other digital electronic devices.

**"Content Security Updates"** are new versions of the Software's content security component(s) also known as pattern files or definitions.

**"Documentation"** means the technical documentation and operating instructions made available to You of the Software and/or Services, including printed updates, "Read Me" files and release notes available on-line.

**"License Instrument"** means one or more of the following applicable documents which further defines Your license rights to the Software and/or Services: purchase order, order confirmation, license certificate or similar license document issued by Trend Micro, or a written agreement between You and Trend Micro, that accompanies, precedes or follows this Agreement.

**"Major Product Updates"** are subsequent versions of the Software that contain new features or functionality.

**"Minor Product Updates"** are subsequent versions of the Software that contain bug fixes or minor enhancements and are typically designated by a change in the version number to the right of the decimal point.

**"Paid Users"** are those who have purchased a license to Software and/or Services or valid users of IBM Product (as such term is defined below).

**"Personal Users"** those using TMEE for personal, non-commercial purposes.

**"Service Updates"** are enhancements to the databases, heuristics or underlying technology of the Services. Service Updates are implemented without end user action.

**"Trial Users"** are those who have not purchased a license to Software and/or Services and are using the Software and/or Services for trial or evaluation purposes,

**"Use Level"** means the license use model (which may include, but not be limited to, by Computer, console, operating system, hardware system, application, CPU, key, User, server, Virtual Machines, machine tier limitations, as applicable) by which Trend Micro measures, prices and licenses the right to use the Software and/or Services, in effect at the time an order is placed for such Software or Services, as indicated in this Agreement and the applicable License Instrument.

**"Users"** are Your employees or independent consultants who use, or have access to, a Computer (including a shared Computer) or other device to perform work for You, which Computer or device is connected directly or indirectly to the server(s) or other systems on which the Software is installed or who benefit from the use of the Software or is the person who actually uses any portion of the Software.

**"Virtual Machines"** are software implementations of a machine (i.e. a computer) that executes programs like a physical machine. Virtual Machines includes Managed Virtual Machines. "Managed Virtual Machine" means Powered-On Virtual Machine. "Powered-On Virtual Machine" means a virtual machine in an active power state and executing computing instructions.

7. **Ownership.** The Software, Services and Documentation are the property of Trend Micro Incorporated or its licensors, and are protected by copyright, trade secret and U.S. or other patent laws,

and international treaty provisions. By accepting this Agreement, You acquire the limited rights to the Software, Documentation and Services as set forth in Sections 8 and 9 below.

8. **Trial or Personal Use License.** *Trial User:* If You are a trial user, You may use the Software or Services for evaluation or testing purposes in a non-production environment for thirty (30) days from the date You download the Software or initiate the Service (the "Evaluation Period"). During the Evaluation Period, You are entitled to web or email based technical support in the country where You are located and to Minor Product Updates, Content Security Updates and Service Updates, if applicable. These capitalized terms are defined in Section 6 above. *Trend Micro Email Encryption Client for Personal Users Only:* You may use TMEE on a non-exclusive, non-transferable, non-assignable basis for Your own personal, non-commercial use. No more than five (5) users per email domain (excluding certain consumer domains) may access and use the TMEE software. You are entitled to web based technical support in the country where You are located. You agree to use TMEE to create electronic signatures that are valid for establishing the authenticity and integrity of Your email communications, and that to the fullest extent permitted by applicable law, such electronic signatures will be admissible in evidence in a court of law, as evidence of the authenticity and integrity of Your email communications.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, SERVICES AND RELATED DOCUMENTATION USED FOR TRIAL, EVALUATION OR PERSONAL USE PURPOSES ARE PROVIDED TO YOU "AS IS" WITHOUT WARRANTIES OF ANY KIND. You may not use without Trend Micro's prior written consent the Software, Services and related documentation (i) if You are a direct competitor of Trend Micro or (ii) for purposes of comparison with or benchmarking against third party products or services (including publishing performance information or comparisons), except and only to the extent that such activity is expressly permitted by applicable local law notwithstanding this limitation. Your right to use the Software or Services ends when the Evaluation Period ends, when Your personal use of TMEE ends, or if You violate any term of this Agreement. Trend Micro also reserves the right to terminate any Trial or Personal Use License with or without cause with five (5) days prior written notice. Upon termination, You must delete or destroy all copies of the Software and Documentation and stop using the Software or Service. Your obligations and rights under Sections 7, 16, 21, 23-28 and 30 will continue to apply after termination.

9. **Paid Use License.**

**(A) For Software:** Subject to Your compliance with the terms and conditions of this Agreement and payment of the applicable license fees, You (i) may install and use the Software solely in support of Your internal business operations in the quantities and at the Use Levels described in this Agreement and the applicable License Instrument and (ii) have the right to make a reasonable number of copies of the Software for backup purposes. Use of Service Components is governed by Section B below. No more than five (5) Users of **Trend Micro Control Manager** may access and use that Software's report generation functions at the same time; however, additional concurrent usage licenses are available in groups of five (5) Users. Note that License fees are required for each Virtual Machine that is connected directly or indirectly to the network server(s) on which the Software is installed. If You have obtained the Software on a subscription basis, Your rights to use the Software shall end on the applicable end date as indicated on the applicable License Instrument and You shall cease use of the Software as of such applicable end date.

**(B) For Service Components:** You may enable and use Service Components of the Software solely in support of Your internal business operations in the quantities and at the Use Levels described in this Agreement and the applicable License Instrument during any Maintenance Term (as defined in Section 11 below) only.

**(C) For Standalone Services:** Trend Micro will provide You with the Standalone Services solely in support of Your internal business operations for the time period ("Subscription Term"), as stated on Your License Instrument, via online access on an outsourced basis during any Maintenance Term (as defined in Section 11 below) twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, subject to the applicable service level agreement. You must initiate Services to receive them, and You must initiate them promptly to receive Services for the full Subscription or Maintenance Term. You agree to provide Trend Micro with all information required to activate and perform the Standalone Services, including directory information with a complete list of valid email

addresses, and to notify Trend Micro of increases in the number of actual Users so that Subscription fees can be adjusted accordingly.

**(D) For Documentation:** You may make a reasonable number of copies of the Documentation for internal training and use. All such copies must include the same proprietary notices as the original Documentation provided by Trend Micro.

**(E) For valid licensees of IBM Tivoli Endpoint Manager for Core Protection (“IBM Product”) only:** If You are a licensee of the IBM Product and You have elected to utilize and license the optional Software, Trend Micro Smart Protection Server (“TMSPS”), made available by Trend Micro to licensees of the IBM Product without cost as an alternative to utilization of Trend Micro-hosted services performing similar functionality in connection with the IBM Product, then in addition to the other terms and conditions of this Agreement, the following terms and conditions of this Section shall apply to You and Your license and use of TMSPS: (1) You represent and warrant to Trend Micro that You are currently a licensee of the IBM Product; (2) Your license to access, install and use TMSPS shall be valid only for such time as You maintain a valid, in force license to the IBM Product; and (3) You agree that TMSPS is licensed and made available to You solely by Trend Micro under this Agreement and is not delivered, licensed or provided by IBM, its subsidiaries, resellers or other business partners. Notwithstanding anything to the contrary in this Agreement, to the fullest extent permitted by applicable law, You understand and agree that Sections 8, 11-13 and 16-18 of this Agreement are void and shall not apply to You and Your license of TMSPS and, further, TMSPS is provided to You “AS IS, WITH ALL FAULTS” and without warranties of any kind or nature. All other Sections shall apply to You.

10. **License Restrictions.** Under this Agreement, You may not: (i) transfer or sublicense the Software, Service or Documentation to another person or entity; (ii) rent, lease, loan, auction, or resell the Software, Service or Documentation; (iii) modify, adapt, translate, or create derivative works of the Software, Service or Documentation; (iv) reverse engineer, de-compile, or disassemble the Software or Service, in whole or in part, or otherwise attempt to reconstruct or discover the source or object code or underlying ideas, algorithms, file formats, programming or interoperability interfaces (or in any instance where the law permits any such action, You agree to provide Trend Micro at least 90 days’ advance written notice of Your belief that such action is warranted and permitted and provide Trend Micro with an opportunity to evaluate if the law’s requirements necessitate such action); (v) use the Software or Services to provide services to third parties or allow use or access to the Software by any third party other than contractors or consultants acting on Your behalf, (vi) use the Software or Services other than as specifically described in and in accordance with the accompanied Documentation or (vii) authorize others to do any of the foregoing. Trend Micro reserves the right to take reasonable steps, including the suspension of Maintenance or any Services, to prevent unauthorized access to, or use of, the Software and/or Services.

11. **Maintenance/Renewal for Paid Use Licenses.** A paid use license to Software and/or Services entitles You to Minor Product Updates, Content Security Updates and/or Service Updates (as defined below), as applicable, and web or e-mail based technical support from Trend Micro or an authorized reseller in the country where the license to the Software or Services were purchased (collectively “Maintenance”) for one (1) year from the date You receive the product serial number, registration key or activation code, or order confirmation, whichever is earlier (“Maintenance Term”). To retain Maintenance rights, You must purchase annual renewal Maintenance from Your supplier (or Trend Micro) prior to expiration of the Maintenance Term. After the expiration of any Maintenance Term, You have no right to Maintenance, unless You purchase annual renewal Maintenance from Trend Micro (or an authorized reseller or dealer) at the then current fees. Trend Micro reserves the right to charge reinstatement fees in addition to overdue Maintenance fees to reinstate Maintenance after the expiration of the Maintenance Term. You shall have no right to reinstate Maintenance if the period of lapse exceeds one (1) year.

Trend Micro reserves the right to offer modified versions of its Software or Services, including subsequent versions that contain new features or functionality, as new products or services for additional consideration. Minor Product Updates, Content Security Updates and updates to the Software’s scan engine components must be routinely installed from Trend Micro’s Website for the Software to operate effectively. Trend Micro reserves the right to change, update or modify the terms and conditions and to impose rules, policies, terms or conditions on Your use of the Software and Services, including fees, applicable to Maintenance and other Services from time to time and to charge additional fees for technical

support outside the country where the Software was originally purchased. Such modified terms and conditions (referred to in this Agreement as “Additional Terms”) will be effective immediately and incorporated into this Agreement. Your continued use of the Software and Services following will be deemed to constitute acceptance of any and all such Additional Terms. All Additional Terms are hereby incorporated into this Agreement by this reference. Technical support is only available for each version of Software or Service for eighteen (18) months after its release.

Upon installation, Minor and Major Product Updates become “Software” for the purposes of this Agreement and Your use of the Minor and Major Product Updates are subject to the terms and conditions of this Agreement and any additional terms and conditions that accompany such Minor and Major Product Updates.

12. **Service Acknowledgements.** Software Components and Standalone Services operate by forwarding certain data (“Forwarded Data”) to Trend Micro owned or controlled servers for security scanning. As a condition of using any Service and by accepting this Agreement You represent and warrant that: (i) You are legally permitted and authorized to access, and to provide Trend Micro with access to, the Forwarded Data and agree to provide Trend Micro with evidence of such authorization upon request; (ii) You authorize Trend Micro to act as Your data processing agent and at Your discretion when performing the Services; (iii) You undertake to inform the source of the Forwarded Data, to the extent required by local law, of the scope and purpose of the Service, which may entail the transfer of Forwarded Data to servers outside Your jurisdiction (including outside the European Union); (iv) You agree that You are responsible for deciding if and how You use the Services; and (v) You represent that You will otherwise use the Services only in a legal manner. To the extent applicable to You, You agree Trend Micro and You to be bound by the « standard contractual clauses for the transfer of personal data to processors established in third countries », issued by the European Commission in a decision dated February 5, 2010 and available at [http://www.cnil.fr/fileadmin/documents/Vos\\_responsabilites/Transferts/CCT-2010-Ss\\_Traitants\\_VE.pdf](http://www.cnil.fr/fileadmin/documents/Vos_responsabilites/Transferts/CCT-2010-Ss_Traitants_VE.pdf), which is incorporated hereto by reference. Information relating to data processing and technical and organizational processes are described in the relevant accompanying Documentation. In the event of any breach of the representations and warranties in Section 12, Trend Micro may with prior notice and without prejudice to its other rights, suspend the performance of the Service until You can show to Trend Micro's satisfaction that any such breach has been cured.

13. **Product Registration.** In order to receive Services, Updates and technical support, a Representative must register with Trend Micro and activate the Software and Services. Registration enables us to contact You and to ensure that only validly licensed entities receive Maintenance and other Services. Registration requires an entity name and address, a contact name, a valid product serial number, and a valid email address for renewal and other legal notices. Failure to register does not diminish Your warranty rights, but Trend Micro cannot provide access to Services, Updates or technical support without registration.

14. **Information Collection.** In addition to product registration information, Trend Micro must process and store certain information (including but not limited to internet protocol (IP) address, Media Access Control (MAC) address and operating system version) about Your network and equipment to provide Maintenance and related support services and for improving functionality of the Software and Services. To improve its products, Trend Micro may periodically upload information electronically from installed Software about product usage, detected malware or potentially unwanted files and may use Service traffic to improve its data bases and heuristics. You agree that Trend Micro may (i) use uploaded data from installed Software to improve products and services; (ii) share data that has been identified as malicious or unwanted content with affiliates and security partners; and (iii) use and disclose uploaded data for analysis or reporting purposes only if any such use, sharing or disclosure does not identify You or include any information that can be used to identify any individual person. Trend Micro reserves the title, ownership and all rights and interest to any intellectual property or work product resulting from its use and analysis of such information.

15. **Data Protection Regulations.** The use of certain Software and/or Services may be subject to data protection laws or regulations in various jurisdictions. You are responsible for determining how and if You need to comply with those laws or regulations.

16. **Consent To Electronic Communications.** Trend Micro may send You required legal notices and other communications about the Software and Services, including Updates, upgrades, special offers and pricing or other similar information, customer surveys or other requests for feedback (“Communications”). Trend Micro will send Communications via in-product notices or email to registered email addresses of named contacts, or will post Communications on its Websites. By accepting this Agreement, You consent to receive all Communications through these electronic means only and acknowledge and demonstrate that You can access Communications on Websites.

17. **Paid Use License Warranty.** For paid use licenses, Trend Micro warrants that: (i) for thirty (30) days following Trend Micro’s issuance of a registration key or activation code (whichever comes first), the program portion of the Software will substantially conform with the applicable Documentation, as updated from time to time, including “ReadMe” files and release notes available online; and (ii) during the Maintenance Term, it will carry out the Services in a professional manner with reasonable skill and care (“Limited Warranty”).

18. **Customer Remedies.** If the Software or Services do not conform to the Limited Warranty above, Trend Micro’s entire liability and Your sole remedy shall be, at Trend Micro’s option, for Trend Micro to: (a) use commercially reasonable efforts to correct the error in the Software; (b) help You work around or avoid the Software error; (c) refund You the cost of the Software; (d) re-perform the Services; or (e) refund any prepaid fees for Services after the date of breach of the Limited Warranty; provided that You notify Trend Micro of Your claim under the Limited Warranty within the warranty period. THE LIMITED WARRANTY DOES NOT APPLY TO (A) ANY ERROR CAUSED BY ACCIDENT, ABUSE, ALTERATION, MISUSE, MISAPPLICATION OR ANY PROBLEM OR ERROR IN THE OPERATING SYSTEM SOFTWARE WITH WHICH THE SOFTWARE IS DESIGNED TO OPERATE OR (B) ANY PROBLEM OR ERROR RESULTING FROM THE USE OF THE SOFTWARE WITH PROGRAMS THAT HAVE SIMILAR FUNCTIONS OR FEATURES OR ARE INCOMPATIBLE WITH THE SOFTWARE. ANY REPLACEMENT SOFTWARE WILL BE WARRANTED FOR THE REMAINDER OF THE ORIGINAL LIMITED WARRANTY PERIOD.

19. **No Other Warranties.** GIVEN THE NATURE AND VOLUME OF MALICIOUS AND UNWANTED ELECTRONIC CONTENT, NEITHER TREND MICRO NOR ITS RESELLERS OR SUPPLIERS WARRANT THAT THE SOFTWARE OR THE SERVICES ARE ERROR FREE OR WILL DETECT ONLY OR ALL SECURITY OR MALICIOUS CODE THREATS OR THAT USE OF THE SOFTWARE AND RELATED UPDATES WILL KEEP YOUR NETWORK OR COMPUTER SYSTEMS FREE FROM ALL VIRUSES OR OTHER MALICIOUS OR UNWANTED CONTENT OR SAFE FROM INTRUSIONS OR OTHER SECURITY BREACHES.

EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTIONS 17 AND 18 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, TREND MICRO AND ITS RESELLERS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ANY IMPLIED WARRANTIES RELATING TO THE SOFTWARE THAT CANNOT BE EFFECTIVELY DISCLAIMED SHALL BE LIMITED TO THIRTY (30) DAYS FROM THE DATE YOU ACQUIRE THE SOFTWARE.

20. **Back-Up.** While using any Software or Service, You must regularly back-up Your data and computer system(s) on separate media. You acknowledge that any failure to back-up data and systems may cause You to lose data in the event of an error in the Software, Service or Updates. Since only You, not Trend Micro, can know the value of Your computer systems and data, only You can implement back-up plans and safeguards appropriate to Your needs in the event that an error in the Software, Service or Updates causes computer problems or data loss.

21. **Limitation of Liability; Consequential Damages.**

(A) SUBJECT TO SECTION 21(B) BELOW AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TREND MICRO OR ITS SUPPLIERS BE LIABLE TO YOU (i) FOR ANY LOSSES WHICH WERE NOT REASONABLY FORSEEABLE AT THE TIME OF ENTERING INTO THIS AGREEMENT OR (ii) FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND OR FOR LOST OR CORRUPTED DATA OR MEMORY, SYSTEM CRASH, DISK/SYSTEM DAMAGE, LOST PROFITS OR SAVINGS, OR LOSS OF BUSINESS, ARISING OUT OF

OR RELATED TO THIS AGREEMENT OR THE SOFTWARE, SERVICES OR MAINTENANCE. THESE LIMITATIONS APPLY EVEN IF TREND MICRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY.

**(B)** SECTION 21(A) DOES NOT SEEK TO LIMIT OR EXCLUDE THE LIABILITY OF TREND MICRO OR ITS SUPPLIERS IN THE EVENT OF DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY FOR WHICH IT IS NOT PERMITTED BY LAW TO EXCLUDE.

**(C)** SUBJECT TO SECTIONS 21(A) AND 21(B) ABOVE, IN NO EVENT WILL THE AGGREGATE LIABILITY OF TREND MICRO OR ITS SUPPLIERS FOR ANY CLAIM, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR ANY OTHER CAUSE OF ACTION OR THEORY OF LIABILITY, EXCEED THE LICENSE FEE PAID OR PAYABLE BY YOU OR THE AMOUNT PAID BY YOU TO TREND MICRO, ITS RESELLERS OR ITS SUPPLIERS FOR ONE YEAR OF SERVICE. YOU AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION AND ACKNOWLEDGE THAT WITHOUT YOUR AGREEMENT TO THESE LIMITATIONS, THE FEES CHARGED FOR THE LICENSE, SERVICE AND MAINTENANCE WOULD BE HIGHER OR IN THE CASE OF SOFTWARE FOR EVALUATION, TREND MICRO WOULD NOT BE ABLE TO OFFER YOU THE RIGHT TO EVALUATE THE SOFTWARE AT NO CHARGE.

22. **Audit.** Upon reasonable notice and during regular business hours, Trend Micro shall have the right to audit Your use of the Software or Service. If the audit reveals unlicensed Computers, Virtual Machines or Users, You shall pay Trend Micro, within thirty (30) days of notice, the then-current license, subscription and/or Maintenance fees for unlicensed Computers, Virtual Machines or Users. If the fees payable for unlicensed use exceed five percent (5%) of fees actually paid for the audited time period, You must reimburse Trend Micro for the costs and expenses of the audit.

23. **Confidentiality/Nondisclosure.** During the term of this Agreement or any Evaluation Period, You may be exposed to certain information not generally known to the public that Trend Micro considers and treats as confidential and proprietary ("Confidential Information"), including but not limited to product serial numbers, registration keys or activation codes, and information that, due to its character or nature, a reasonable person in a like position and under like circumstances would treat as secret and confidential. During the term of this Agreement and at all times after its termination, You agree (i) to hold the Confidential Information in confidence; (ii) not to disclose Confidential Information to any third parties, except for employees and independent contractors who have a "need to know" and who have signed agreements containing disclosure and use restrictions no less stringent than those in this Section; and (iii) not to use Confidential Information for any purpose except as required to perform under this Agreement.

24. **Assignability/Severability.** You may not assign this Agreement or any right under this Agreement to any party, including any affiliate, without written approval from Trend Micro. Any purported assignment by You shall be null and void. Trend Micro may assign this Agreement, in whole or part, and delegate its obligations to qualified third parties or Trend Micro affiliates and/or subsidiaries, provided that no delegation of its obligations shall relieve Trend Micro of its obligations under this Agreement. You agree that if a court or other competent tribunal in any jurisdiction finds any provision of this Agreement invalid, such finding shall not affect any other provisions of the Agreement, which shall remain in full force and effect.

25. **Export Control.** The Software is subject to export controls under the U.S. Export Administration Regulations. You shall not export or re-export it to entities within, or residents or citizens of, embargoed countries or countries subject to applicable trade sanctions, nor to prohibited or denied persons or entities without proper government licenses. Information about such restrictions can be found at the following websites: <http://www.treas.gov/ofac> and <http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>. As of the date above, countries embargoed by the U.S. include Cuba, Iran, North Korea, Sudan and Syria. You are responsible for any violation of the US export control laws related to the Software. By accepting this Agreement, You confirm that You are not a resident or citizen of any country currently embargoed by the U.S. and that You are not otherwise prohibited from receiving the Software.

26. **Compliance with Import Regulations.** Without prejudice to the generality of Section 25 above, the Software may also be subject in certain jurisdictions to import laws or regulations including but not limited to those relating to encryption use. You are responsible for determining how and if You need to comply with any such applicable laws or regulations.

27. **U.S. Government Restricted Rights.** If You are an agency or unit of the United States Government, then You acknowledge that the Software, (i) was developed at private expense, (ii) is commercial in nature, (iii) is not in the public domain, and (iv) is "Restricted Computer Software" as that term is defined in Clause 52.227 19 of the Federal Acquisition Regulations (FAR) and is "Commercial Computer Software" as that term is defined in Subpart 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS). The Government agrees that (i) if the Software is supplied to the Department of Defense (DoD), the Software is classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" in the Software and its Documentation as that term is defined in Clause 252.227 7013(c)(1) of the DFARS, and (ii) if the Software is supplied to any unit or agency of the United States Government other than DoD, the Government's rights in the Software and its Documentation will be as defined in Clause 52.227 19(c)(2) of the FAR.

28. **Force Majeure.** Neither party will be liable to the other party for any alleged or actual loss or damages resulting from delays or failures in performance caused by acts of the other party, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, war, riot, terrorism, accident, shortage, delay in transportation, or any other cause beyond the reasonable control of the party whose performance is so delayed. Any party whose obligations have been suspended under the terms of this Section shall resume the performance of those obligations as soon as reasonably possible.

29. **Termination.** This Agreement is effective until terminated. You may terminate it at any time by notifying Trend Micro in writing. In addition to any other available remedy under applicable law, Trend Micro may terminate this Agreement if You commit a material breach of the Agreement or You fail to cure any breach within thirty (30) days of receipt of notice from us. Upon such termination, You must destroy all copies of the Software. Sections 7, 17-21 and 23-30 survive the termination of this Agreement.

30. **Governing Law/Trend Micro Licensing Entity.**

**North America:** If You are located in the United States or Canada, the Licensor is: Trend Micro Incorporated, 10101 N. De Anza Blvd., Cupertino, CA 95014. Fax: (408) 257-2003 and this Agreement is governed by the laws of the State of California, USA.

**Latin America:** If You are located in Spanish Latin America (other than in any countries embargoed by the U.S.), the Licensor is: Trend Micro Latinoamérica, S. A. de C. V., Insurgentes Sur No. 813, Piso 11, Col. Nápoles, 03810 México, D. F. Tel: 3067-6000 and this Agreement is governed by the laws of Mexico. If You are located in Brazil, the Licensor is Trend Micro do Brasil, LTDA, Rua Joaquim Floriano, 1.120 – 2º andar, CEP 04534-004, São Paulo/Capital, Brazil and this Agreement is governed by the laws of Brazil.

**Europe, Middle East and Africa:** If You are located in the United Kingdom, this Agreement is governed by the laws of England and Wales. If You are located in Austria, Germany or Switzerland, this Agreement is governed by the laws of the Federal Republic of Germany. If You are located in France, this Agreement is governed by the laws of France. If You are located in Italy, this Agreement is governed by the laws of Italy. If You are located in Europe, the licensor is: Trend Micro EMEA Limited, a company incorporated in Ireland under number 364963 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. Fax: +353-21 730 7 ext. 373.

If You are located in Africa or the Middle East (other than in those countries embargoed by the U.S.), or Europe (other than Austria, France, Germany, Italy, Switzerland or the U.K.), the Licensor is: Trend Micro EMEA Limited, a company incorporated in Ireland under number 364963 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. Fax: +353-21 730 7 ext. 373 and this Agreement is governed by the laws of the Republic of Ireland.

**Asia Pacific (other than Japan or any countries embargoed by the U.S.):** If You are located in Australia or New Zealand, the Licensor is: Trend Micro Australia Pty Limited, Suite 302, Level 3, 2-4 Lyon

Park Road, North Ryde, New South Wales, 2113, Australia, Fax: +612 9887 2511 and this Agreement is governed by the laws of New South Wales, Australia.

If You are located in the People's Republic of China, the licensor is Trend Micro (China) Inc., 8<sup>th</sup> Floor, Century Ba-shi Building, No. 398 Huai Hai Zhong Road, Shanghai, China 20020, and this Agreement is governed by the laws of the People's Republic of China laws, and You agree that any dispute related to this Agreement must be submitted to the Beijing Arbitration Commission, Tel: 86-21-63848899, If You are located in Hong Kong, India, Indonesia, Malaysia, the Philippines, Singapore, Taiwan or Thailand, the Licensor is: Trend Taiwan Incorporated, 8F, No.198, Tun-Hwa S. Road, Sec. 2, Taipei 106, Taiwan, Republic of China. If You are located in Hong Kong, this Agreement is governed by the laws of Hong Kong. If You are located in India, this Agreement is governed by the laws of India. If You are located in Indonesia, Malaysia, the Philippines, Singapore, or Thailand, this Agreement is governed by the laws of Singapore. If You are located in Taiwan, this Agreement is governed by the laws of Taiwan.

**Japan:** If You are located in Japan, the licensor is Trend Micro Incorporated, Shinjuku MAYNDS Tower, 1-1 Yoyogi 2-Chome, Shibuya-ku, Tokyo 151-0053, Japan and this agreement is governed by laws of Japan.

The United Nations Convention on Contracts for the International Sale of Goods and the conflict of laws provisions of Your state or country of residence do not apply to this Agreement under the laws of any country.

31. **Websites/Questions.** Trend Micro Websites may be accessed via [www.trendmicro.com](http://www.trendmicro.com). Direct questions about this Agreement to: [legalnotice@trendmicro.com](mailto:legalnotice@trendmicro.com).