

**Premium Support Program Agreement
For North America and South America Only**

IMPORTANT: READ CAREFULLY. THE RIGHT TO PURCHASE AND/OR USE PREMIUM SUPPORT SERVICES PROVIDED BY TREND MICRO (herein “Trend” as is more fully described below) BY BUSINESS, GOVERNMENTAL, AND OTHER LEGAL ENTITIES IS SUBJECT TO AND CONDITIONED ON ACCEPTANCE OF AND AGREEMENT TO THIS PSP AGREEMENT. PREMIUM SUPPORT SERVICES ARE NOT AVAILABLE FOR PERSONAL USE, HOME USE, AND/OR CONSUMER USE. Any additional, conflicting, or different terms or conditions proposed by Company in any Company-issued document (such as an Order), are hereby rejected by Trend and excluded herefrom.

Scope and Limitations:

Parties:	The Parties to this Premium Support Program Agreement (this “PSP Agreement”) are: (a) Trend; and (b) Company (as defined below). Trend and Company are each a “Party” to this PSP Agreement and are collectively the only “Parties” to this PSP Agreement. All other persons are third parties.
PSP Eligibility:	This PSP Agreement sets forth the ONLY terms and conditions that are applicable to the provision of Premium Support Services that have been purchased by Company that have been purchased by Company either directly from Trend or through a Channel Partner and nothing in any License Agreement will be binding on the Parties with respect to the Premium Support Services. For the avoidance of doubt, Premium Support Services will only be provided in connection with Products that are: (a) subject to a valid paid Trend License Agreement (as defined below); (b) installed/deployed by Company; and (c) then-currently covered by paid Annual Maintenance or Support provided by Trend.
Ineligible Persons:	This PSP Agreement is NOT available to any type of service provider business/organization that: (a) provides any use/benefit to third parties of Products that are licensed/sold to the service provider; or (b) provides services/support for Trend’s Products to such service provider’s customers. However, Trend may offer similar technical services to service providers under a different SOW or services agreement.
Territory:	This PSP Agreement is only available to Company if it is located, and for matters/incidents arising, in North America (including Central America and the island nations of the Caribbean) and/or South America, subject always to and limited by the terms, conditions, waivers, limitations, disclaimers, and exclusions in this PSP Agreement, and present and future Applicable Laws that apply to the Premium Support Services and/or the performance of either Party hereunder that prohibits or restricts Premium Support Services sale, use, or access: (a) to certain technology/goods/services; (b) to specified countries; and/or (c) by defined persons (herein collectively the “Territory”).
Binding Agreement:	This PSP Agreement will become effective when Premium Support Services are ordered by Company and such order is accepted by Trend (at Trend’s sole discretion either by notice or commencement of Premium Support Services). Any order by Company of Premium Support Services shall be deemed to be unconditional acceptance by Company of the terms and conditions of this PSP Agreement. This PSP Agreement is in lieu of, and supersedes, the Trend 2017 Premium Support Program Agreement for the United States of America and Canada for all new orders for, and renewals of, Premium Support Services in the Territory after the publication date of this PSP Agreement.
Availability:	Premium Support Services may <u>ONLY</u> be purchased under this PSP Agreement for the Term (defined in <u>Section 13</u>), subject always to <u>Section 1.1.3</u> .

COMPANY IS ORDERING OR HAS ORDERED TREND’S PREMIUM SUPPORT SERVICES EITHER DIRECTLY FROM TREND OR THROUGH A CHANNEL PARTNER FOR ACCESS AND USE IN CONNECTION WITH COMPANY’S INTERNAL BUSINESS USE. BY COMPANY: (1) ORDERING FROM TREND OR THROUGH A CHANNEL PARTNER; (2) CAUSING TREND TO PROVIDE; AND/OR (3) ACCESSING OR USING PREMIUM SUPPORT SERVICES, COMPANY AGREES THAT ANY SUCH ACTION CONSTITUTES:

- a. COMPANY’S ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THIS PSP AGREEMENT,
- b. COMPANY’S ACCEPTANCE AND AGREEMENT TO THIS PSP AGREEMENT FOR PREMIUM SUPPORT SERVICES,

- c. COMPANY'S ONGOING REPRESENTATION AND WARRANTY TO TREND THAT COMPANY MEETS (AND AT ALL TIMES WILL COMPLY WITH) ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH IN THIS PSP AGREEMENT, AND
- d. COMPANY'S REPRESENTATION AND WARRANTY TO TREND THAT COMPANY'S REPRESENTATIVE ACTING ON ITS BEHALF IS AUTHORIZED TO AND DOES POSSESS THE AUTHORITY TO ACCEPT, AGREE, AND BIND COMPANY TO THIS PSP AGREEMENT.

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

1. Overview; Agreed Definitions.

1.1.1 Application of this PSP Agreement. Subject always to termination in accordance herewith, this PSP Agreement that has been accepted and agreed by Company are applicable only to PSP Support Services for such time that such PSP Support Services are subject to an outstanding order that Company has issued to Trend or a Channel Partner, and has been accepted by Trend at its discretion.

1.1.2 Entire Agreement. Company and Trend agree that this PSP Agreement (including the Standard Contractual Clauses and Data Processing Addendum that form a part hereof and set forth certain of the responsibilities of the Parties with respect to GDPR Data) is the final, complete, and exclusive statement of the agreement between the Parties with respect to access to and use of PSP Support Services procured by Company under an order, and any prior agreements, representations, statements, white papers, or advertisement of Trend (whether oral, written, or website) or otherwise arising from any course of dealing between the Parties or usage of the trade or descriptions that are not specifically set forth in this PSP Agreement with respect to the subject matter hereof, are all merged into and superseded by this PSP Agreement. Trend will not be bound by, and specifically objects to, any term, condition or other provision which is different from or in addition to the provisions of this PSP Agreement (whether or not it would materially alter this PSP Agreement) and which is submitted by Company in any order, confirmation, correspondence or other document. **In entering into this PSP Agreement, each Party represents and warrants to the other Party that it is NOT relying on any extrinsic representation, warranty, guarantee, covenant, promise, forbearance, or inducement of any kind or nature that is or was made by any person that is not specifically set forth in this PSP Agreement.**

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

1.2 Agreed Definitions. In addition to initially capitalized and underlined definitions, descriptions, agreements, clarifications, and limitations thereto that may be set forth elsewhere in this PSP Agreement, the initially capitalized and underlined definitions, descriptions, agreements, clarifications, and limitations set forth in this Section 1.2 shall have the meanings specified or referred in this Section 1.2 (each is an "**Agreed Definition**") and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms. Any initially capitalized and underlined term not set forth herein shall have the meaning given thereto in the License Agreement.

"Annual Maintenance" means an agreement in effect between Trend and Company authorizing Company to receive annual maintenance or support for licensed Products, whether sold separately in connection with the license of software, or included in the annual license price for cloud services. Services provided under Annual Maintenance are generally described at <https://success.trendmicro.com/support-policies>. Fees for Annual Maintenance are in addition to fees for the Premium Support Services set forth in this PSP Agreement. If Company's right to received Annual Maintenance on any Product lapses or terminates for any reason for any or all Products provided under any License Agreement, then this PSP Agreement will terminate automatically without notice (and without partial or full refund of any monies payable or paid hereunder) with respect to any and all Products no longer subject to Annual Maintenance.

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

"Authorized Contact" shall have the meaning set forth in Section 11(a).

"Channel Partner" means any distributor, reseller, value-added reseller, or system integrator permitted to resell Products; *provided, however*, Amazon Web Services and/or the AWS Marketplace are not Channel Partners for purposes of this PSP Agreement. Each Channel Partner is a "supplier" of Trend for purposes of this PSP Agreement.

“Company” means an entity that: (a) has purchased and also agrees with and accepts to be bound to this PSP Agreement; and (b) is, on the Effective Date, a party (with Trend) to one or more License Agreement(s) (as defined below) for certain Trend Products (as defined below) that are subject to Annual Maintenance (as defined below).

“Company Data” means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to Trend in connection herewith; and/or (b) otherwise provided or made available to Trend in the course of Trend providing Premium Support Services.

“CSE” shall have the meaning set forth in [Section 2\(a\)](#).

“CSM” shall have the meaning set forth in [Section 2\(a\)](#).

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

“Diamond Premium Support Services” shall have the meaning set forth in [Section 3](#).

“Effective Date” means the effective date on which a notice of purchase and entitlement is sent to Company by or on behalf of Trend after the purchase of Premium Support Services pursuant to this PSP Agreement for a period of one (1) year or for such other period as may be detailed in the entitlement notification. Trend reserves the right to modify and/or update this PSP Agreement at any time by posting a revised version on Trend Micro’s website.

“GDPR” means the European Union General Data Protection Regulation that is only applicable to Personal Data that is subject to, regulated by, and protected under the GDPR and shall also include additional laws, rules, and regulations now or hereafter promulgated by the European Union, any Member State, or other governmental authority under or supplemental to the GDPR, as the same may be amended, supplemented or replaced from time to time; and ‘controller,’ ‘processor,’ and ‘data subject’ shall have the meanings respectively assigned to them in the GDPR.

“GDPR Data” shall mean ‘personal data’ (as defined in Art. 4 of the GDPR) under the GDPR that is made available or supplied by Company to Trend pursuant to this PSP Agreement, if and only to the extent that the GDPR applies to Trend with respect to its processing of such ‘personal data.’ This will include the GDPR Data contained in Company files, Company files, emails or other data or information provided to, accessible by or made available to Trend in the course of providing any Premium Support Services to Company, such as any Personal Data within malware cases or Product or service requests made by URL strings, email senders and recipients, contents of emails and attachments to emails and any other GDPR Data contained in or in relation to files or other data or information provided to, made accessible by or made available by Company to Trend in connection with Trend’s provision of Premium Support Services to Company.

“Global Privacy Notice” means Trend’s Global Privacy Notice published from time-to-time at <https://www.trendmicro.com/privacy> or as may be requested by Company from legal_notice@trendmicro.com.

“License Agreement” means the click-through electronic EULA available at: <https://www.trendmicro.com/eula> and/or a Corporate License Agreement, or other similar wet/manual signature agreement that is in effect between Trend and Company licensing/authorizing Company to use certain Product(s). If the License Agreement between Company and Trend terminates for any reason for all or any portion of the Products or a Product is no longer subject to paid Annual Maintenance, then this PSP Agreement with respect to those terminated Products will terminate automatically without notice and without partial or full refund of any monies payable or paid hereunder.

“Major Malware Outbreak” means a process in which Trend determines that a malware infection has propagated to an extent where Trend will declare a malware alert depending on severity of the outbreak. Determination and severity of the alert is made at Trend’s sole discretion.

“Pattern File Updates” means release versions of new protection signature detections for products released by Trend for the Products during the term of any License or Annual Maintenance. Protection pattern file updates contain detection routines designed to identify and block new known computer malware and other cyber or malicious threats.

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

“Premium Support Services” means, when purchased by Company, Premium Support Services and Diamond Premium Support Services (if purchased) provided by or on behalf of Trend as described herein. For the avoidance of doubt, Premium Support Services do not include “hands-on” services wherein Trend has any responsibility for installing, configuring, deploying, or servicing Products licensed to Company. Rather Premium Support Services are consultative and advisory services to

supplement and provide additional technical competency to Company's own IT staff with respect to licensed Products, but for the avoidance of doubt, Premium Support Services will never include in any event or circumstance, any assistance, guidance, or support of or for any Company or third party products, software, services, systems, networks, or other devices.

"Product(s)" means a Trend software, hardware, appliance, cloud services, and other Trend services licensed or subscribed to by Company during the Term and for which Annual Maintenance fees are current. For the avoidance of doubt, Trend will provide no Premium Support Services for any Trend software, hardware, appliance, cloud service, and other Trend service that is not then-subject to paid Annual Maintenance.

"Product Updates" means revisions, enhancements, and/or new versions of the Products (excluding new or other products, as reasonably determined by Trend) that contain bug fixes and/or product enhancements/improvements released by Trend during the term of any License Agreement or Annual Maintenance.

"Resident Onsite Add-on" shall have the meaning set forth in Section 3(d).

"Resident Onsite CSM" shall have the meaning set forth in Section 3(d).

"Standard Contractual Clauses" or **"Clauses"** or sometimes also referred to the "EU Model Clauses" means the Standard Contractual Clauses (processors) published by the European Commission, which Standard Contractual Clauses are attached to the Data Processing Addendum at trendmicro.com/dpa or as may be requested by Company from legal_notice@trendmicro.com. The Parties further agree that if a subsequent replacement version of the Standard Contractual Clauses is published by the European Commission, such replacement version will automatically replace the existing Standard Contractual Clauses and apply mutatis mutandis.

"Term" is defined in Section 13.

"Trend" means Trend Micro Incorporated, a California corporation.

"Trend Intellectual Property" is defined in Section 12(a).

2. Premium Support Services. On the terms and subject to the conditions of this PSP Agreement, Company is entitled to all of the Premium Support Services outlined in this Section 2 during the Term hereof:

(a) Customer Service Manager; Customer Support Engineers. Trend will appoint a Customer Service Manager (each a **"CSM"**) to serve as Company's principal contact with Trend in the Territory during the Term of this PSP Agreement. Company acknowledges and agrees that each CSM is not dedicate exclusively to performing services for Company, but rather, is a shared resource that also provides Premium Support Services to other Trend customers and may also provide other services to or on behalf of Trend. In addition, Trend's technical support center that supports the Territory is staffed with a team of Customer Support Engineers (each a **"CSE"**). Trend will appoint one or more CSEs that will assist the CSM with technical Product issues. The specific services listed in this PSP Agreement shall be limited to matters arising in the Territory.

(b) CSM Assignment. Trend will assign appropriately qualified employees to serve as CSMs and CSEs and to provide Premium Support Services under this PSP Agreement. The CSM assigned to Company will be located at a Trend service center in the Territory. Trend reserves the right, at its discretion and at any time, to replace the CSM or CSEs assigned to Company. Trend may consider replacing a CSM or CSE at Company's request, but only if such request and the reasons therefore, are stated in writing.

(c) Management of Company Account by CSM. The CSM will develop an understanding of the Company's system architecture and hardware configuration based on the information provided by Company and will coordinate Company's requests for technical support. Each CSM will coordinate issues, communication and questions originating from, or reported by, Authorized Contacts (as defined in Section 11(a) below) of Company. Communications with the CSMs shall be conducted in the English language, unless other languages (e.g., French, Spanish, Portuguese) have been preapproved as set forth below.

(d) Premium Support Services Hours of Availability. Routine (non-urgent) Premium Support Services are available during 7:00 am to 7:00 pm, Central USA time then-in-effect during Trend's announced business days. During Trend's regular business hours, Company may contact its CSM with any service request via telephone. Routine cases and questions submitted outside such business hours/business days will be handled the next following Trend business day. However, critical issues (as defined as Severity One in the URL set forth in Section 10 below) may be escalated twenty-four (24) hours a day, seven (7) days a week. In addition, cases and questions may be submitted via Trend's designated online case management system twenty-four (24) hours a day, seven (7) days a week. For matters that require assistance outside of business hours, Company will receive assistance via Trend's toll-free Customer Service Desk. **Note:** Response times may also be affected by the existence of a Major Malware Outbreak.

- (e) **Initial Planning Session and Customized Account Planning and Management.** The designated CSM will schedule a remote initial meeting at the beginning of the Term with the Company to outline the Premium Support Services purchased under this PSP Agreement, and to establish working procedures. Premium Support Services includes working with the CSM to establish a customized support roadmap.
- (f) **Installation Consultation.** While Premium Support Services do not include any installation, configuration, and/or deployment services (such services may be purchased under a separate SOW if agreed by the Parties), Company may request and Trend may provide hereunder, a reasonable level (as determined by Trend) of remote guidance and advice in connection with Company's efforts to install, configure, and deploy Products. For the avoidance of doubt, any such advice is does not relieve Company of its obligation to install, configure, and deploy all Products (including, without limitation, determining "Company's Configuration" if agreed in any License Agreement) or perform its obligations under Section 11 below.
- (g) **Scheduled Status Meetings.** Remote meetings with CSM and Company technical personnel will be scheduled by the Parties on a mutually agreed upon recurring basis (usually monthly) to discuss pending and planned malware and other security activities as well as services that are included in Premium Support Services; *provided, however*, should a scheduled meeting be missed, such meeting may be rescheduled on agreement of the Parties.
- (h) **Periodic Reports.** Premium Support Services includes periodic reports on mutually agreed intervals (using a Trend pre-defined format) detailing service activity for the previous time period, including the status of open and closed service requests and contract period to date.
- (i) **Annual Onsite Visits.** Premium Support Services include a single onsite visit (of up to two (2) consecutive days) from the CSM during the Term of this PSP Agreement for an account review. The Parties will endeavor to schedule each such visit at least two (2) weeks prior thereto. Trend's expenses in connection with each such visit will be for the account of Trend. The agenda for such visit will be agreed in advance between the Company and CSM, which agenda may include, but is not limited to: configuration review, Product roadmap review, new Product walk through, and/or other similar matters. However, the annual onsite visit shall not be a technical support or service session to address new or existing product or malware incidents or cases -- requests for visits of this nature should be discussed separately with the CSM.
- (j) **Periodic Health-Checks and Security Assessments.** Company may request regular consultations with its assigned CSM to review Product configurations as well as discuss general security practices assessment and recommendations that are applicable to Trend Products only. For the avoidance of doubt, any security assessment under this PSP Agreement is limited to an evaluation under Trend's pre-defined checklist that evaluates Company's deployment of Trend's Products, tools, and technologies, but is not an assessment of Company's general/overall security posture, production network/environment, systems, or third party software/services/products. The frequency of these consultations will be jointly agreed upon by Company and Trend as required. Any and all actions taken arising from or related to any such consultation shall be at the sole discretion and determination of Company and its management.
- (k) **Additional Locations and Language(s).** Additional Premium Support Services may be requested by Company outside the Territory or for languages other than English, that Trend may offer (but only if available) from time-to-time for an additional fee and/or require a separate agreement (either with Trend or a Trend affiliate) with similar or differing terms, depending on location. Such services may include additional CSM or equivalent resource assignments to provide service for the additional location(s)/languages.
- (l) **Right to Use Company Data (including Personal Data).** Trend does not intend or need to have access to Company's Personal Data in providing Premium Support Services, and further, Company agrees not to knowingly provide Trend access to Company's Personal Data except as specifically set forth herein. Nevertheless, to the extent Company makes any Company Data (including Personal Data) stored on Company's system or device available to Trend under any License Agreement and/or this PSP Agreement, Company hereby grants Trend a limited, non-exclusive, paid-up, license to access and use all such Company Data (including Personal Data): (a) as necessary for Trend Micro to provide Premium Support Services as set forth herein or as otherwise requested by Company; (b) to maintain and improve the operation, security efficacy, and functionality of Trend's software and services; (c) to identify and collect information on potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors in order to improve Trend Micro's subject-matter databases and/or provide Premium Support Services hereunder; (d) to comply with its legal obligations and exercise its rights under Applicable Laws; and (e) for other purposes set forth in the this PSP Agreement and/or Trend's Global Privacy Notice.
- (m) **GDPR Data.** This Section only applies to GDPR Data, if any. With respect to GDPR Data now or hereafter provided or made available by Company to Trend in connection with this PSP Agreement, Company hereby appoints and instructs Trend as its processor or subprocessor to process the GDPR Data for the purpose of providing Premium Support Services to Company as described in this PSP Agreement, unless Trend is required otherwise by Applicable Laws; in which case, Trend shall inform Company of that legal requirement before processing unless prohibited by any such Applicable Laws from doing so. Company agrees and confirms that this PSP Agreement constitutes Company's complete and sole instructions to Trend regarding

any and all GDPR Data. By entering into this PSP Agreement, each of Company and Trend acknowledges and agrees that it is also entering into and agreeing to be bound by: (a) the Data Processing Addendum; and (b) the Standard Contractual Clauses, it being further agreed that each of the Data Processing Addendum and Standard Contractual Clauses shall only apply, on the terms and subject to the conditions and limitations set forth herein and therein, if and to the extent that Trend acts as a processor or subprocessor for GDPR Data (but not other Company Data) that Company (and its Affiliates that have been authorized to access, deploy, and/or utilize Services hereunder) provides or makes available to Trend hereunder. If any Affiliates of Company now or hereafter benefits from or utilizes any Premium Support Services, as a condition thereof, Company hereby enters into and agrees to be bound by the Data Processing Addendum and the Standard Contractual Clauses for itself and on behalf of each such Affiliate, and Company represents and warrants to Trend that Company is duly authorized, and Company and all such Affiliates have each taken, all necessary action to do so validly.

3. Diamond Premium Support Services. Company may request and Trend may, at its discretion, agree to permit Company to purchase Diamond Premium Support, and if purchased, Company will receive all of the Premium Support Services outlined in Section 2 above with the following additional services and features (herein “**Diamond Premium Support Services**”):

(a) **CSM Assignment.** Diamond Premium Support Services includes a dedicated, exclusive-use CSM located at a Trend service center who will coordinate all support for Company in the Territory.

(b) **Scheduled Status Meetings.** In lieu of Section 2(g) above, Company is entitled to regularly-scheduled weekly remote meetings with CSM to discuss pending and planned malware and other security services that may be included in Diamond Premium Support Services.

(c) **Periodic Onsite Visits.** In lieu of Section 2(i) above, Company is entitled to one onsite visit (of up to two (2) consecutive days) per calendar quarter at no additional cost or fees from Trend. Onsite visits must be scheduled at least two (2) weeks prior to each visit and may not be carried-over to subsequent quarters. The agenda and purpose of the quarterly onsite visits shall be the same as the annual onsite outlined in Section 2(i) above.

(d) **Resident Onsite Add-on.** Subject to and conditioned on the availability of Trend personnel with the necessary training and competency (each as may be determined by Trend in its sole discretion) in a specific location, Diamond Premium Support Services includes the option to purchase a “**Resident Onsite Add-on**.” This extra cost option has the CSM residing onsite at Company’s premises in the Territory rather than at a Trend service center (herein a “**Resident Onsite CSM**”). In lieu of Section 2(h) above, customers that purchase Diamond Premium Support with Resident Onsite Add-on will receive written and/or verbal daily updates or reports (using a pre-defined format) detailing service activity. Notwithstanding anything contained in Section 2(e) above, customers that purchase Diamond Premium Support Services with Resident Onsite CSM will receive a face-to-face initial planning session.

(e) **Backup or Replacement for Resident Onsite CSM.** In the event of a short-term planned (such as holiday/vacation) or unplanned (such as sickness/family emergency) absence of the Resident Onsite CSM at Company’s premises, the prescribed duties of the Resident Onsite CSM may be temporarily handled by CSM located at any Trend service center. If for some reason the Resident Onsite CSM will not be at the onsite location for a longer period of time (generally greater than three (3) weeks), Trend will work with Company to assign a substitute CSM to deliver services from Company’s premises. Nothing shall prohibit Trend from replacing the Resident Onsite CSM for any reason or no reason, provided that such replacement shall have, in Trend’s determination, the qualifications necessary to perform the obligations of the Resident Onsite CSM.

4. Online Services. Online services available as part of Premium Support Services includes: (a) a password-protected account for Company on Trend’s designated online case management system; and (b) a web-based resource that provides access to the technical support services 24 hours a day, seven days a week. These online services are available in English only.

5. Case Submission. Company may use Trend’s designated online case management system to submit suspected malware cases or other service requests for resolution at any time. By completing a series of online forms, Company can provide Trend and its authorized support representatives with key information necessary to begin addressing the malware case or Product problem. When Company submits a service request to Trend via Trend’s designated online case management system, a CSM is automatically notified.

6. Track Cases. Trend’s designated online case management system includes a database that allows Company to track the current status of any open product or malware/virus-related case. The case tracker also provides a history of all cases submitted by Company to technical support, by date of submission, status, type, and submitted files.

7. Proactive Malware Support.

(a) **Alerts for Major Malware Outbreaks.** Company will designate one Authorized Contact as the main Major Malware Outbreak Authorized Contact. In the event of a Major Malware Outbreak, Trend will alert Company's major outbreak Authorized Contact 24x7 via telephone and/or email in accordance with Company's instructions for Major Malware Outbreaks.

(b) **Advanced Malware Incident Assistance.** In the event of an internal malware outbreak, Company may request Advanced Malware Incident Assistance through the CSM. Company will receive information on the infection threat, steps on mitigating further infection risk, eradication procedures, and recommendations on preventing future infections. This service is provided remotely via telephone, email, or other online web-based troubleshooting tools; *provided, however*, Company understands and agrees that remediation actions remain Company's sole responsibility.

8. **Malware Case Escalation.** In the event of a critical malware infection case, Company and Trend may agree to escalate the case to an antimalware engineer. In the event the case cannot then be resolved within a reasonable amount of time, Company and Trend can agree to escalate the case to the antimalware escalation engineering group for resolution. Via the CSM, the antimalware engineering group will provide Company with periodic status reports.

9. **Product Case Escalation.** As described in Section 10 below, all Product-related incident service requests from Company are assigned a priority based upon the severity of the incident for service is requested. Upon case submission, the CSE will work closely with Company to diagnose and help resolve the problem. In the event the CSE cannot provide a resolution, the CSE will promptly escalate the issue to a senior product specialist, which will try to recreate, diagnose and resolve the problem or provide an interim workaround or fix. In the event the request cannot be addressed at this level, the request will then be escalated to Trend's service engineering group. In addition, upon Company's request, the CSM/CSE may escalate any unresolved service request to the CSE/CSM manager and senior Trend management if normal escalation channels as set forth above have not provided case resolution. It is agreed that some or all Premium Support Services escalated by the CSE/CSM may be provided by Trend's worldwide Affiliates.

10. **Incident Severity Definitions.** Upon receipt of a case submission from Company, Trend shall prioritize the problem/matter based on the Trend Micro Global Severity Level Definitions and Target Initial Response Times that are published from time-to-time at <http://www.trendmicro.com/severitydefinitions>. The assigned Severity Level for an incident may be re-evaluated and reassigned at any time by Trend as it deems necessary or advisable.

11. **Company Responsibilities and Requirements.**

(a) **Authorized Company Contacts.** Company must appoint authorized individuals to act as contacts for technical support (each an "**Authorized Contact**"), which Authorized Contacts will be resident in the Territory unless otherwise notified by Company and approved by Trend. (Trend states that it is Trend's current policy to approve an Authorized Contact located outside the Territory, if and only if, such person is primarily assigned to support the Territory activities of Company during the normal hours of operations, emergencies notwithstanding.) Premium Support Services customers may appoint up to six (6) Authorized Contacts and Diamond Premium Support Services customers may appoint up to a total of twelve (12) Authorized Contacts. Only an Authorized Contact may initiate a service request to Trend. Company must provide Trend with up-to-date contact information for the Authorized Contacts to receive proactive malware alerts. An Authorized Contact may not share its login, ID, or other credentials with anyone else, nor delegate its responsibilities as an Authorized Contact to anyone other than another Authorized Contact. Company may update this contact information through Trend's designated online case management system. Premium Support Services and Diamond Premium Support Services customers may appoint up to two (2) additional authorized contact(s) (each an "**Additional Contact**") subject to payment of Trend's standard Additional Contact fee.

(b) **Right to Access and Use.** Company agrees that it will: (i) timely secure and maintain (in each of the foregoing instances at its cost) at all times, all rights and consents as may be necessary to permit Trend to access (in physical and/or electronic form, either locally or remotely) and use all Company-licensed/leased/operated/controlled/owned networks, software, hardware/equipment, and facilities in connection with the performance or provision of Premium Support Services; (ii) grant to Trend access to Company's employees who have the relevant knowledge, experience and information required to reproduce any reported occurrence of malware or other Incidents, to identify the respective causes and to develop countermeasures, and (iii) provide Trend with other assistance and information under this PSP Agreement as is required in order that Trend can provide the Premium Support Services to Company under this PSP Agreement; this includes, in particular, the granting of access by Trend to the Company's business premises during normal business hours, the granting of full access by Trend to Company's system environment including access rights to the extent as is required to provide the Premium Support Services, as well as the provision of any work equipment (office space, office furniture, power connection etc.) in a quality usual in the industry as is required to provide the Premium Support Services to Company. Company shall assist Trend in the monitoring and improvement of the quality and type of Premium Support Services by providing Trend at regular intervals with written and/or oral feedback regarding the quality and type of the Premium Support Services provided under this PSP Agreement.

(c) **Trained Staff.** Since many installation and deployment issues and problems are actually issues with third party components of a customer's environment, in order to enable Trend to properly and efficiently provide Premium Support Services

to Company, Company agrees that it will only assign employees (including, without limitation, Authorized Contacts) in support of Products who are properly trained and experienced in the installation, operation, and maintenance of Products as well as hardware, desktops, servers, network operating systems, storage, and applications in Company's environment. Trend may, at any time, review and discuss with Company any Authorized Contact's knowledge and experience to determine eligibility. If issues arise during a call for Premium Support Services that, in Trend's reasonable opinion, may be a result of an Authorized Contact's lack of training, experience and/or knowledge, Company may be required to replace that Authorized Contact. While Trend expects that Company employees will benefit from the collaborative efforts of the Parties hereunder, no live classroom courses or training are provided by Trend as part of Premium Support Services, but such may be available by Trend's training/education group by separate statement of work.

(d) Prompt Notification. Upon identification of any possible error or problem with a Product, Company will provide Trend with timely, accurate, and complete information about a malware event or Product case sufficient to permit Trend to reproduce, diagnose, and resolve the case and agrees to otherwise cooperate with Trend in case resolution. Company will implement any corrective procedures provided by Trend promptly after receipt from Trend.

(e) Current Releases. Throughout the Term of this PSP Agreement, Company will use commercially reasonable efforts to download and install new Pattern Updates (including scan engines updates if applicable) promptly after they become available. Company shall also install and use the most current version of Products/Product Updates within a reasonable time after new versions become available

(f) Information/Assistance. Company will supply Trend with current information about Company's system architecture and hardware configuration including, when available, "Visios" or other similar electronic blueprints. Company also agrees to notify its CSM within seven (7) days of any changes to its network or operating environment.

(g) Reasonable Assistance/Information. Company, at its expense, will provide Trend with access to, and assistance of, personnel with the appropriate knowledge, expertise and information reasonably required: (i) to recreate, diagnose and/or resolve reported problems; and (ii) to provide other assistance or information under this PSP Agreement. Company shall also otherwise fully cooperate with Trend in connection with the provision of Premium Support Services under this PSP Agreement. In addition, Company agrees to help Trend monitor and improve the quality and nature of its Premium Support Services Program by providing Trend with periodic written and/or oral feedback about the quality and nature of services provided under this PSP Agreement.

(h) Back-Up. During the Term of this PSP Agreement, Company will regularly back-up its computer system(s) and data on separate media. Company acknowledges that any failure to do so may significantly decrease its ability to mitigate any harm or damage arising from, among other things, any problem or error in the Products, the provision of services under this PSP Agreement, and/or Company or third party products, systems, networks, and/or services.

(i) Affiliate Support. If Company is authorized in a License Agreement to permit its Affiliates (as defined in the License Agreement) in the Territory to access and use any or all Products licensed to Company, no such Affiliate will be entitled to directly request or receive services hereunder from Trend, rather, such Affiliates must request support from Company, which in turn, will request that such services be provided by Trend to Company's Authorized Contact(s) in support of such Affiliate that is located in the Territory.

12. Intellectual Property Rights; License Grant.

(a) Trend Intellectual Property. The Parties acknowledge that Trend may and utilize in the performance of the Premium Support Services preexisting proprietary computer software, methodology, techniques, software libraries, tools, algorithms, materials, products, ideas, skills, designs, know-how, or other intellectual property owned by Trend or its licensors, and Trend may also create additional intellectual property and work product (including, without limitation, any new or additional virus/malware/threat information) in the performance of the Premium Support Services (all of the foregoing, the "**Trend Intellectual Property**"). Company agrees that all proprietary rights to the Trend Intellectual Property, as it existed as of the date hereof and as it may be modified or created in the course of providing Premium Support Services, including patent, copyright, trademark, and trade secret rights, to the extent they are available, are the sole and exclusive property of Trend, free from any claim or retention of rights thereto on the part of Company, and Company hereby assigns (without additional compensation of any kind) to Trend any rights Company may have, now or in the future in any of the foregoing. Premium Support Services are not intended to be, and will not be interpreted as, "work for hire" under any Applicable Law. As between the Parties, Company owns all right, title, and interest in and to any proprietary information, materials, or other items made available by Company to Trend in connection with its performance of Premium Support Services hereunder.

(b) License Grant. Subject to the terms and conditions of this PSP Agreement, including payment of fees by Company, Trend grants to Company a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, license to use and reproduce, for Company's own internal business operations in connection with its use of Trend Products, any

Trend Intellectual Property made available to Company by Trend in connection with the performance of Premium Support Services; *provided, however*, none of the provisions of this Section 12(b) or the remainder of this PSP Agreement shall apply to Products that are licensed to Company under a License Agreement.

13. Term and Termination.

(a) **Term.** The "**Term**" of this PSP Agreement will be one (1) year (ONLY) beginning on the Effective Date and will terminate automatically and without notice at the end of the Term on the terms and subject to the conditions of this PSP Agreement. Company may purchase Premium Support Services for an additional one (1) year term, but such services will NOT be subject to and performed under the terms and conditions of this PSP Agreement, but instead, such additional Premium Support Services will be subject to and performed under Trend's then-current PSP Services terms and conditions of agreement published by Trend from time-to-time.

(b) **Termination.** Either Party may terminate this PSP Agreement at any time upon thirty (30) days prior written notice if the other Party is in breach of any material provision of this PSP Agreement, if such breach is not cured within such thirty (30) day period. This PSP Agreement shall terminate automatically with no further action by either Party if: (i) the Company's License Agreement(s) for all Products terminates for any reason; (ii) either Party files a voluntary petition for protection under the bankruptcy laws of the United States or a similar state statute; (iii) an involuntary petition for bankruptcy is filed against a Party and such petition is not dismissed within sixty (60) days; or (iv) a receiver, trustee or similar entity is appointed for a Party, or a Party makes a general assignment for the benefit of creditors.

(c) **Effect of Termination.** Upon termination of this PSP Agreement because of a breach by Company, Trend's obligation to provide the services under this PSP Agreement shall immediately cease. Upon termination, the Company shall destroy or return any material containing Trend's intellectual property provided to Company under this PSP Agreement.

14. Fees. Company will pay Trend or Channel Partner, as the case may be, the applicable annual Premium Support Services fees for this PSP Agreement on the agreed payment terms. Any other sums payable by the Company under this PSP Agreement are due within thirty (30) days of invoice.

15. Limited Warranty.

(a) **Limited Warranty.** During the Term, Trend warrants only to Company that it will perform Premium Support Services in a competent workmanlike manner consistent with prevailing industry standards. The foregoing warranty is personal to Company and may not be assigned, transferred, or passed-through to any third party. **SUBJECT TO THE FOREGOING, THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER CONDITIONS OR WARRANTIES EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PREMIUM SUPPORT SERVICES PROVIDED UNDER THIS PSP AGREEMENT. WITH RESPECT TO PREMIUM SUPPORT SERVICES AND TREND'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS PSP AGREEMENT, TREND (FOR ITSELF, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS) HEREBY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES OR CONDITIONS ALLEGED TO HAVE ARISEN FROM CUSTOM, USAGE, OR PAST DEALINGS BETWEEN THE PARTIES.**

(b) **Exclusive Remedy.** If at any time Premium Support Services do not conform to the Limited Warranty set forth in Section 15(a), and Company notifies Trend in writing of such failure within the warranty period, Trend will use commercially reasonable efforts, at its sole cost and expense, to re-perform Premium Support Services to achieve commercially reasonable conformance with the Limited Warranty; *provided, however*, the Parties specifically agree that Trend shall have no obligation hereunder the PSP Agreement: (i) to correct any or all errors in the Products; or (ii) with respect to matters, events, or circumstances arising from or related to any other agreement, including, without limitation, any License Agreement. If Trend is unable to re-perform Premium Support Services to achieve commercially reasonable conformance with the Limited Warranty after using commercially reasonable efforts, as Trend's sole obligation and liability and Company's sole and exclusive right and remedy with respect thereto, either Company or Trend may at the discretion of either, terminate this PSP Agreement for convenience, in which event Trend will promptly refund to Company the portion of the fees already paid for Premium Support Services that are applicable to the remainder of the terminated Term from and after the effective date thereof.

16. Limitation of Liability; Disclaimer of Damages. **THE TOTAL LIABILITY OF TREND AND OR ITS AFFILIATES OR SUPPLIERS TO COMPANY FOR LOSS, CLAIMS, AND/OR DAMAGES ARISING OUT OF OR RELATED TO ANY EXPRESS/IMPLIED OR STATUTORY WARRANTY, CONDITION, MISREPRESENTATION, BREACH OF CONTRACT, UNDER ANY CIVIL OR BUSINESS CODE, NEGLIGENCE, STRICT LIABILITY, AND OTHER TORT OR EQUITABLE ACTION OR OTHERWISE ARISING OUT OF OR RELATED TO THIS PSP AGREEMENT AND/OR THE PREMIUM SUPPORT SERVICES PROVIDED OR TO BE PROVIDED HEREUNDER, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES (INCURRED IN REASONABLE RELIANCE UPON TREND) IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE, THE FEES PAID BY COMPANY TO TREND UNDER THIS PSP AGREEMENT DURING THE ONE (1) YEAR TERM. IN NO EVENT OR CIRCUMSTANCE SHALL TREND BE LIABLE TO COMPANY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE**

OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, (A) LOST PROFITS OR SAVINGS; (B) LOSS OF GOODWILL OR REPUTATION; (C) LOSS OF BUSINESS OR OTHER ECONOMIC LOSS; OR (E) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, DENIAL OF ACCESS TO, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE ANY COMPANY DATA/INFORMATION) ARISING OUT OF OR RELATED TO THIS PSP AGREEMENT OR THE PREMIUM SUPPORT SERVICES PROVIDED OR TO BE PROVIDED HEREUNDER, WHETHER OR NOT TREND OR COMPANY HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED.

17. General.

(a) **Assignment.** Trend may assign or subcontract some or all of its support service obligations under this PSP Agreement to qualified third parties including Trend's affiliates, provided that no such assignment or subcontract shall relieve Trend of its obligations under this PSP Agreement. The Company shall not sell, transfer, or assign all or any portion of its rights or obligations under this PSP Agreement without the prior written consent of Trend which may be withheld at its discretion. Any act in derogation of the foregoing shall be void.

(b) **Entire Agreement.** This PSP Agreement and any amendments thereto, constitutes the entire agreement between the Parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the Parties. This PSP Agreement shall not be modified or amended in any respect, nor shall any of its terms or conditions be waived, except by a subsequent writing, mutually agreed upon and executed by the authorized representatives of both Parties.

(c) **Insurance.** Trend and its subcontractors, if any, will each maintain proper Workers' Compensation Insurance covering its and their respective employees performing services under this PSP Agreement.

(d) **Legal Effect.** If any provision of this PSP Agreement shall be held illegal, invalid or unenforceable, the remaining provisions shall continue in full force and effect, and the Parties shall substitute for the invalid provision a valid provision which most closely approximates the economic effect and the intent of the invalid provision.

(e) **Waiver.** No delay or failure by either Party to exercise or enforce at any time any right or provision of this PSP Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this PSP Agreement. A waiver to be valid shall be in writing, but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

(f) **Force Majeure.** Except for its obligations to make payments under this PSP Agreement, neither Party shall be liable to the other Party for performance delays/non-performance due to causes beyond its reasonable control, including, for example, delays/non-performance due to earthquake, flood, fire, storm, hurricane, natural disaster, act of God, war, terrorism, armed conflict, labor strike or work stoppage, lockout, boycott or other similar or dissimilar events beyond its reasonable control.

(g) **Governing Law; Severability.** This PSP Agreement, the performance of the performance of the Parties hereunder, and all disputes arising or related hereto will be governed by and construed in accordance with the laws of the State of New York and controlling U.S. federal law applicable to agreements entered into and to be performed wholly therein. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this PSP Agreement. The Parties irrevocably consent to the sole and exclusive *in personam* jurisdiction of: (a) the United States District Court for the Southern District of New York, located in the Borough of Manhattan, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (b) the Supreme Court of the State of New York, located in the Borough of Manhattan; and all proceedings shall be litigated and determined solely and exclusively in such courts. Each of the Parties represents and agrees that such *in personam* jurisdiction is reasonable and fair and hereby waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens* in such courts.

(h) **Third Party Beneficiaries.** This PSP Agreement is entered into solely between and for the benefit of, and may be enforced only by, each Party signatory hereto and no third party (including, without limitation, employees/subcontractors of either Party) shall have any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) hereunder, whether arising hereunder, under any statute now or hereafter enacted, or otherwise.

End of PSP Agreement