

This **TREND ALLIANCE PARTNER PROGRAM** ("Agreement") is made between TREND MICRO INCORPORATED, a California corporation with its address at 10101 N. De Anza Blvd, Cupertino, CA 95014 and its Affiliated Companies ("Trend") and the company ("Company" or "Partner") as identified in the signature block below and is made as of the date (following Company's acceptance) that Trend notifies Company by email of Trend's acceptance of this Agreement ("Effective Date").

## 1. INTERPRETATION

1.1 The purpose of this document is to create a single mechanism under which Trend and Company may form Agreements.

"Affiliated Company" means, in relation to either party, any entity: (a) which is owned 50% or more by that party; or (b) over which that party exercises management control; or (c) which is under common control with that party; or (d) which owns 50% or more of that party; "Agreement" means each agreement that is comprised of this Agreement and an Exhibit executed by the parties;

"Confidential Information" means any information disclosed by one party to another under each Agreement which is, prior to or at the time of disclosure, identified in writing as confidential or proprietary;

"Equipment" means the hardware (including components), software media and spare parts listed in Trend's standard product price lists published from time to time. Trend Equipment, or parts or components of Trend Equipment may be new or used. Regardless, Trend warranty terms apply;

"Exhibit" means any exhibit to this Agreement as executed by the parties from time to time;

"Products" means Equipment or Software;

"Services" means any offering in Trend's Service List (each offering, a "Service Listing") which is located on Trend's website at <http://www.trendmicro.com> (a hard copy of each of which will be made available to Company on request), together with such other service offerings as the parties may agree on, including services described in any statement of work ("SOW");

"Software" means (i) any binary software programs listed in Trend's standard price lists published from time to time, (ii) any Updates, and (iii) any related user manuals or other documentation;

"Trend Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Trend in connection with Products and Services;

"Technology" means any technology identified in an Exhibit and provided to Trend for use in the development or distribution of Products or Services; and

"Updates" means subsequent releases and error corrections for Software previously licensed, as listed in the standard price lists published by Trend from time to time.

## **2. CONFIDENTIAL INFORMATION**

A party receiving Confidential Information ("the Recipient") must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees, contractors and third party providers performing services in furtherance of this Agreement and/or each party's internal activities that are obligated to the Recipient under similar confidentiality restrictions; and only for the purposes for which it was provided under the relevant Agreement. The obligations do not apply to information which: (a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality; (b) is or becomes known to the public through no act or omission of the Recipient; (c) the Recipient develops independently without using Confidential Information of the other party; or (d) is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

## **3. EXPORT LAWS**

Products, Services, Technology, materials, tools, and technical data delivered by Trend may be subject to US export controls or the trade laws of other countries. Company and Trend agree to comply with all export control regulations and acknowledge that they have the responsibility to obtain such licenses to export, re-export or import as may be required. Company and Trend agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. Company and Trend will not use or provide Products, Services, Technology, materials, tools, and technical data for nuclear, missile, or chemical and biological weaponry end uses.

## **4. TREND TRADEMARKS**

4.1 Company may refer to Products and Services by their associated names, provided that such reference is not misleading and complies with Trend's Trademark and Logo Policies, which are found on Trend's partner website at .

4.2 Company may not remove or alter any Trend Trademarks, nor may it co-logo Products or Services. Company agrees that any use of Trend Trademarks by Company will inure to the sole benefit of Trend.

4.3 Company agrees not to incorporate any Trend Trademarks into Company's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

## **5. LIMITATION OF LIABILITY**

5.1 Each party acknowledges the full extent of its own liability to the other, arising from: death or personal injury resulting from negligent acts or omissions; or claims for non payment; or the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability).

5.2 Subject to 5.1 above, and the exceptions identified in any Exhibit and to the extent not prohibited by applicable law: (a) each party's maximum aggregate liability for all claims relating to each Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to two million US dollars (U.S. \$2,000,000) per Agreement or, in the case of purchases, to the amount paid to the other party during the previous twelve (12) months for the product or service which is the subject matter of the claim up to a maximum of two million US dollars (\$2,000,000); and (b) neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the Agreement (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages.

5.3 Liability for damages will be limited and excluded, even if any exclusive remedy provided for in the Agreement fails of its essential purpose.

## **6. TERMINATION AND EXPIRATION**

6.1 Either party may terminate the Agreement or any Exhibit immediately by written notice: (a) if the other party commits a non-remediable material breach; or (b) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach.

6.2 Either party may terminate the Agreement immediately by written notice if no Exhibit is in effect.

6.3 On termination or expiration of the Agreement, all Exhibits shall automatically terminate with immediate effect. Following termination or expiration of an Exhibit, each party will deliver to the other any property of the other in its possession or control relating to that Exhibit, in good condition, reasonable wear and tear excepted. Notwithstanding the immediately preceding sentence, neither party shall be obligated to return any property to which it has continuing rights, including the right of possession.

## **7. ASSIGNMENT AND SUBCONTRACTING**

The Agreement and any Exhibit may only be assigned by either party as described in the applicable Exhibit.

## **8. DISPUTE RESOLUTION**

The parties will use reasonable efforts to resolve any dispute arising out of the Agreement or any Exhibit through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.

## **9. GENERAL**

9.1 All disputes will be governed by the laws of California. The venue for litigation will be the appropriate courts located in Santa Clara County, California. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.

9.2 A party is not liable under any Agreement for nonperformance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform. This provision does not relieve either party of its obligation to make payments then owing.

9.3 All written notices, including by electronic mail or facsimile, required by the Agreement or any Exhibit must be delivered in person or by means evidenced by a delivery receipt or acknowledgment and will be effective upon receipt.

9.4 This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

9.5 If any provision of the Agreement is held invalid by any law or regulation of any government or by any court or arbitrator, such invalidity will not affect the enforceability of other provisions.

9.6 Rights and obligations under the Agreement and any Exhibit which by their nature should survive, will remain in effect after termination or expiration of the Agreement or the relevant Exhibit.

9.7 Any express waiver or failure to exercise promptly any right under the Agreement or any Exhibit will not create a continuing waiver or any expectation of non-enforcement.

9.8 No modification to the Agreement or any Exhibit will be binding, unless in writing and manually signed by an authorized representative of each party.

9.9 Each Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter

## EXHIBIT A- PARTNER PROGRAM EXHIBIT

THIS **EXHIBIT ("Exhibit")** together with the Agreement, above, constitute the "Program Agreement," with an Effective Date as defined in the preamble to the Agreement, above ("Exhibit Effective Date"). The Agreement is an integral part of this Exhibit and is incorporated herein by reference.

### 1. INTERPRETATION

1.1 In this Exhibit:

"Appendix" means any Appendix to this Exhibit;

"The Program" means the "Trend Alliance Partner Program, Trend's program of benefits for developers.

"The Program Reference Guide" means Trend's program manual that describes the current benefits, policies, and processes of the Program.

"Trend Platform" means the combination of Trend hardware and software which comprise an operating system on which Company's products or services are designed to operate.

1.2 Capitalized terms used but not defined in this Exhibit have the meanings set out in the Agreement.

1.3 In the event of any inconsistency between the elements of this Program Agreement, the following order of precedence will apply (in descending order):

- (a) an Appendix to this Exhibit;
- (b) this Exhibit
- (c) The Program Reference Guide
- (d) the Agreement;
- (e) applicable purchasing terms re Products.

**2. MEMBERSHIP LEVEL.** Trend may assign to Company the appropriate membership level and category name based on Company's qualifications and as defined in the Program Reference Guide. Benefits in the Program may vary according to such levels.

**3. PRIMARY CONTACT.** Company agrees to maintain a primary contact ("Primary Contact") for the Program in order to facilitate communications between Trend and Company regarding the Program. The Primary Contact will receive all communications regarding the Program, and Company may not choose to be excluded from such communications.

**4. REGISTRATION FORM.** Prior to Company's acceptance of the Program Agreement, Company must complete the Program Registration Form, and which is hereby made a part of this Program Agreement. Company's duties regarding the Program Registration Form, e.g., updating responsibility, are set forth in the Program Reference Guide.

**5. RIGHT TO PUBLISH; DATA PROTECTION.**

5.1 Trend may use Company's name in promotional materials, including press releases, presentations and customer references regarding the sale of Products or Services. These permissions are free of charge for worldwide use in any medium. Trend will obtain Company's prior written approval for publicity that contains claims, quotes, endorsements or attributions by Company, such approval not to be unreasonably withheld.

5.2 Except for Company Confidential Information, all Company materials and information provided by Company to Trend through the Program may be used in Trend publications via any media and distributed at the sole discretion of Trend. If Company has non-confidential materials it does not want Trend to use and distribute in this manner, it must not submit them to Trend through the Program. By submitting any materials and information to Trend, Company thereby warrants and represents that it has obtained all necessary consent from its customers, employees, or third parties mentioned in such materials, for such use of those materials and information.

5.3 In the event Company elects to purchase Products indirectly through an Authorized Trend Reseller Partner (resellers), Company warrants and represents that it has obtained its Primary Contact's informed consent to allow Trend to share the Primary Contact's personal information with such potential channel partners, to effect the purposes of this Program Agreement.

5.4 In processing the materials and information described in Sections 5.2 and 5.5, Company shall: (i) comply with the provisions and principles of applicable data protection legislation; (ii) have in place adequate technical and organizational security measures to ensure the confidentiality of such processing; and (iii) act only on instruction from Trend in relation to the delivery of such materials and information to Trend.

5.5 Company acknowledges that Company data supplied by Company to Trend, including the personal information of the Primary Contact and other Company contacts, will be stored in the United States of America, and Company warrants and represents that it has permission from its employees to allow Trend to use such personal information in order to contact those Company employees regarding the Program.

**6. DISCOUNTED PRODUCTS.** In the event Company is qualified by Trend to purchase discounted Products under the Program, and Company elects to participate in such purchasing, the following terms shall apply:

6.1 Discounts and Purchase Limits. The relevant discounts (which apply to direct purchases from Trend only) and purchase limits for such Products shall be set forth in the Program Reference Guide, and may vary according to membership level.

6.2 Purposes allowed for use of Products: Company must use the Products only for the purposes and according to the limitations set forth in the Program Reference Guide. Company grants Trend the right to confirm that the Products are being utilized only for such purposes and grants Trend access to its facilities upon reasonable notice to confirm such use.

6.3 Company Products Developed or Ported: Any Company products which Company lists in the Program Registration Form for development or porting on the Products must:

(a) comply with the Trend Platform compatibility commitment relevant to Company's membership category and level, as set forth in the Program Reference Guide;

(b) be made available for sale, lease or license to end users according to the relevant timetable set forth in the Program Reference Guide; and

(c) be supported by Company to end users, including the provision of updates and bug fixes.

6.4 Indemnification Regarding Company products. Company shall indemnify, defend and hold Trend harmless against any loss, liability, damage, cost or expense including reasonable attorney's fees and all consequential and incidental damages, arising out of any claim or action brought against Trend alleging liability on the basis of the manufacture, marketing, advertising, distribution, export, sale or use by any person of Company's products and/or services marketed and/or developed pursuant to this Program Agreement, or regarding Company's website which Trend links viewers to pursuant to Article 9 of this Exhibit, and including, but not limited to, any of Company's products and/or services marketed with any of the Program logos, or any use of such logos by Company; provided, however, that Company shall not be obligated to indemnify or defend Trend on account of any claim of trademark infringement regarding Trend Trademarks and such logos to the extent that Company is in compliance with this Program Agreement.

6.5 Direct vs. Indirect Purchasing Method. Company may elect to purchase Products either directly from Trend, or indirectly through Authorized Trend Reseller Partner (resellers), depending on which method(s) are made available by Trend in a particular geographic area and according to any guidelines in the Program Reference Guide. Company must choose one of such methods for purchases from Trend through the Program.

6.6 Purchasing Terms. The purchasing terms governing the Products are as follows:

(a) if Company's location is in a country in which Trend allows **direct** sales, and Company chooses to buy from Trend directly, the purchasing terms are the Trend standard "Purchasing Exhibit" for such country, which must be executed prior to purchasing (is available from Trend upon request).

(b) if Company's location is in a country in which Trend allows **indirect** sales, and Company chooses to buy from Trend indirectly, the purchasing

terms are those agreed to between Company and the applicable Trend Authorized Reseller Partner (reseller).

6.7 License for Software. All Trend or third party computer software products acquired through the Program shall be licensed and governed by the terms of the end user license accompanying such products when delivered to Company, subject to the limitations of Section 6.2, herein.

6.8 Resale; Transferability of Software License(s).

(a) Company may transfer any operating system Software license with its related Equipment, if: (i) the transfer occurs at least one (1) year after Trend's delivery of the Equipment; and (ii) Company notifies Trend and obtains a written undertaking from its transferee to comply with the applicable licensing terms.

(b) In the event that Company resells a Product in violation of this provision, Trend shall invoice Company for, and Company agrees to pay Trend, the difference between the net price of the Equipment package and the list price of the package components, or for Products purchased at a discount, the amount of the discount provided.

6.9 Exclusions. Except as expressly provided in the applicable license governing the Software: (a) no licenses, immunities or other rights are granted under any Trend copyright, trade secret, or know-how by implication, estoppel or otherwise; and (b) no rights, licenses or immunities are granted under any Trend patent (including but not limited to any patent claims reading upon combinations of any Company product in combination with any Trend product) or any third party intellectual property, directly or by implication, estoppel or otherwise.

6.10 Other Trend Discount Programs. Any purchase by Company of Products through the Program constitutes a waiver of any right to buy discounted development products under any other Trend agreement.

**7. WARRANTY DISCLAIMER.** EXCEPT FOR: (1) ANY WARRANTY ACCOMPANYING DOCUMENTATION FOR ANY TREND PRODUCT PURCHASED UNDER THE PROGRAM, AND (II) ANY WARRANTIES CONTAINED HEREIN OR IN AN EXHIBIT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT SUCH DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

## **8. USE OF TREND TRADEMARKS AND LOGOS**

8.1 Trend Trademark Rights. Company agrees that as between Company and Trend, Trend is the sole owner of all right, title and interest in and to the Trend Trademarks and all associated goodwill. Company is granted no right, title or license to, or interest in, any Trend Trademark. Company agrees not to challenge Trend's ownership or use, or the validity, of the Trend Trademarks, or attempt to adopt or register any mark identical or confusingly similar to any of the Trend Trademarks. Should

Company acquire (by operation of law or otherwise) any rights in any Trend Trademark, it shall immediately at no expense to Trend assign to Trend all such rights and associated goodwill, applications and registrations. Company will cooperate with Trend and take all reasonable actions required to assist Trend to secure, protect and maintain ownership rights in the Trend Trademarks worldwide, at Trend's cost, including giving prompt notice to Trend of any potential infringement thereof and cooperating with Trend in the preparation, execution and recording of legal documents necessary to register or otherwise protect the Trend Trademarks.

8.2 Logo Usage. Trend grants to Company a limited, non-exclusive, non-transferable, royalty-free, worldwide permission to use an applicable Trend logo (the "Logo"), if any, to refer or relate to Trend's program for Company's Partner Type(s) and only:

- (a) in the exact form provided by Trend;
- (b) in pre-sale advertising and marketing materials that prominently display Company's own corporate name and logo, but not on product, packaging, documentation, shipping containers, or other materials distributed with Products or the rendering of Services;
- (c) on Company's web site, as a link to the Trend's home page ([www.trendmicro.com](http://www.trendmicro.com)) or to an Internet URL to be provided by Trend's program manager;
- (d) in a manner less prominent than Company's own corporate name and logo;
- (e) in accordance with the Trend Trademark & Logo Usage Requirements and with any graphics standards distributed by Trend;
- (f) in a manner that is truthful and not misleading, and that does not use the Logo to imply any relationship with, or endorsement or sponsorship by, Trend that is not true;
- (g) in a manner that avoids disparaging statements or implications about Trend or its products or services;
- (h) on materials that are in compliance with all applicable laws and governmental regulations; and
- (i) with the following trademark legend on the page where the Logo appears (unless Company is required to use a more specific legend by any other agreement Company may have with Trend): "Trend, Trend Micro, the Trend logo and the Trend Alliance Partner Program are trademarks or registered trademarks of Trend Micro Incorporated in the U.S. and other countries and are used with permission. Company and its products/services are independent of Trend Micro Incorporated." Company shall promptly modify any use of the Logo that does not comply with this Agreement upon notice from Trend specifying the non-

compliance, which noncompliance shall be determined in Trend's sole discretion. Trend may change the Logo, or create new logos to replace the Logo currently in use. Upon reasonable notice from Trend, Company shall promptly modify its use of the Logo to conform to any such changed or new logo.

**8.3 Injunctive Relief.** Company agrees that a material breach of the obligations in this Article 8 is likely to cause irreparable harm to Trend for which damages would not be an adequate remedy. Therefore, in addition to its rights and remedies otherwise available at law, including, without limitation, the recovery of damages for breach of this Agreement, Trend shall be entitled to: (a) immediate equitable relief, specifically including, but not limited to, both interim and permanent restraining orders and injunctions; and (b) to such other and further equitable relief as the court may deem proper under the circumstances.

**9. WEBLINK TO COMPANY'S WEBSITE.** Company agrees to allow Trend to link viewers from Company's information (as supplied by Company) on Trend's website to a mutually acceptable webpage on Company's website.

**10. THE PROGRAM REFERENCE GUIDE.** Company agrees to remain at all times during the term of this Program Agreement in compliance with the policies set forth in the Program Reference Guide. Notwithstanding anything to the contrary in the Agreement Section 9.2 ("Notices"), Trend may revise the Program Reference Guide upon thirty (30) days notice by email to Company's Primary Contact. Such changes will not affect fulfillment of either party's responsibilities or order in process before receipt of notice of change.

**11. TERM.** The term of this Agreement runs from the Effective Date until the last day of the anniversary month of the Effective Date, following which this Agreement shall renew automatically for successive one year terms, unless terminated as set forth below.

**12. TERMINATION.** In addition to the termination options under the Agreement, Sec. 6:

12.1 The Program. Trend may terminate the Program at any time by written notice to Company;

12.2 Termination with cause. Either party may terminate the Program Exhibit immediately by written notice (leaving in effect the parties' Agreement and any remaining Exhibit(s) attached thereto):

(a) if the other party commits a non-remediable material breach of this Agreement;

(b) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach; or

(c) if the other party becomes insolvent or files or has filed against it a petition in bankruptcy.

12.3 Termination without cause. Upon the expiration of ninety (90) days' written notice, either party may terminate the Program Exhibit (leaving in effect the parties' Agreement and any remaining Exhibit(s) attached thereto.

**13. NOTICES.** Notwithstanding anything to the contrary in the Agreement, Section 9.3 ("Notices"), the Program Reference Guide may identify certain instances when email notices by either party are acceptable between the Program and the Primary Contact. Regarding written notices, the parties' respective addresses for such notices are: (a) for Trend: as listed in the Program Reference Guide under section entitled, "Notices"; and (b) for Company: the address listed in the Program Registration Form.

**14. MODIFICATION.** Notwithstanding anything to the contrary in Agreement, Section 9.8 ("Modification"), if Trend and Company have executed the Program Agreement electronically ("click agreement"), Trend may post standard addenda on Trend's website, for which Trend provides the means for Company to show its acceptance through a "click" below such addenda.

**IN WITNESS WHEREOF** THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS TREND ALLIANCE PARTNER PROGRAM EXHIBIT AS OF THE EXHIBIT EFFECTIVE DATE.

*[Insert Trend entity's name:]*

[ ]

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**COMPANY:**

[ ]

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_