TERMS OF USE FOR TREND MICRO DEEP SECURITY AS A SERVICE (DSaaS) AVAILABLE ON AZURE MARKETPLACE TO MICROSOFT AZURE ACCOUNT HOLDERS
(these “Terms of Use”)

IMPORTANT: READ CAREFULLY. THE RIGHT TO ACCESS AND USE TREND MICRO’S DEEP SECURITY AS A SERVICE BY BUSINESS, GOVERNMENTAL, AND OTHER LEGAL ENTITIES IS SUBJECT TO AND CONDITIONED ON ACCEPTANCE OF AND AGREEMENT TO THESE TERMS OF USE. DEEP SECURITY AS A SERVICE IS 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 Micro and excluded herefrom.

Trial and Paid Use: Deep Security as a Service (DSaaS) as is made available by Trend Micro from time-to-time on the Azure Marketplace to Microsoft Azure Account holders, but DSaaS is not available or sold for personal use, home use, and/or consumer use by any person.

Effective Date: 1 July 2019

COMPANY IS ORDERING OR HAS ORDERED TREND MICRO’S DEEP SECURITY AS A SERVICE THROUGH COMPANY’S MICROSOFT AZURE ACCOUNT FOR ACCESS AND USE IN CONNECTION WITH COMPANY’S INTERNAL BUSINESS USE. BY COMPANY: (1) ORDERING FROM THE AZURE MARKETPLACE; (2) CAUSING TREND MICRO TO PROVISION; AND/OR (3) ACCESSING OR USING DEEP SECURITY AS A SERVICE, COMPANY AGREES THAT ANY SUCH ACTION CONSTITUTES:

a. COMPANY’S ACKNOWLEDGEMENT THAT IT HAS HAD THE OPPORTUNITY TO READ AND REVIEW THESE TERMS OF USE,
b. COMPANY’S ACCEPTANCE AND AGREEMENT TO THESE TERMS OF USE FOR DEEP SECURITY AS A SERVICE,
c. COMPANY’S ONGOING REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY MEETS (AND AT ALL TIMES WILL COMPLY WITH) ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH IN THESE TERMS OF USE, AND
d. COMPANY’S REPRESENTATION AND WARRANTY TO TREND MICRO THAT COMPANY’S REPRESENTATIVE ACTING ON ITS BEHALF IS AUTHORIZED TO AND DOES POSSESS THE AUTHORITY TO ACCEPT, AGREE, AND BIND COMPANY TO THESE TERMS OF USE.

COMPANY AGREES THAT WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THESE TERMS OF USE AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL SHALL BE CONSTRUED AS AN INFRINGEMENT OF THE CONTRARY.

IF COMPANY DOES NOT ACCEPT AND AGREE TO THESE TERMS OF USE, COMPANY MAY NOT ORDER, REGISTER, DEPLOY, ACCESS, OR USE DEEP SECURITY AS A SERVICE AND COMPANY WILL IMMEDIATELY NOTIFY MICROSOFT THAT COMPANY DOES NOT AGREE TO THESE TERMS OF USE AND WILL NOT BE ACCESSING OR USING DEEP SECURITY AS A SERVICE. AGREED DEFINITIONS USED IN THESE TERMS OF USE ARE IN SECTION 1.2 BELOW.

1. Overview; Agreed Definitions.

1.1.1 Application of These Terms of Use. Subject always to termination in accordance herewith, these Terms of Use that have been accepted and agreed by Company are applicable only to DSaaS for such time that DSaaS is subject to an outstanding Order that Company has issued to, and has been accepted by Microsoft, but only for such time as Company has an active Microsoft Azure Account.

1.1.2 Entire Agreement. The Company and Trend Micro agree that these Terms of Use are the final, complete, and exclusive statement of the agreement between the Parties with respect to access to and use of DSaaS secured by Company under an Order, and any prior written agreements; representations, statements, or advertising of Trend Micro or Microsoft (whether oral or written) or otherwise arising from any course of dealing between the Parties or usage of the trade or descriptions that are not specifically set forth in these Terms of Use with respect to the subject matter hereof, are all merged into and superseded by these Terms of Use. Trend Micro 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 these Terms of Use (whether or not it would materially alter these Terms of Use) and which is submitted by Company in any Order, confirmation, correspondence or other document. In entering into these Terms of Use, each Party represents and warrants to the other Party that it is NOT relying on any extrinsic representation, warranty, guarantee, covenant, promise, forbearance, or inducement of any kind or nature that is or was made by any person that is not specifically set forth in these Terms of Use.

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

1.2 Agreed Definitions. In addition to initially capitalized definitions, descriptions, clarifications, and agreements that may be set forth elsewhere in these Terms of Use (including all policies, procedures, and Trend Micro websites that are specifically referenced and
incorporated herein), the initially capitalized definitions, descriptions, and clarifications shall have the meanings set forth in this Section 1.2 (each is an “Agreed Definition”) and all Agreed Definitions shall be equally applicable to the singular, plural, and derivative forms.

“Administrator” means one or more Company employees with authorization to manage DSaaS on behalf of Company. Each Administrator will have the ability to, among other things, configure, maintain, set rules and policies for, assist Trend Micro in delivery of, view alerts and events generated by, and/or provide technical support for, all or part of DSaaS as determined by Company from time-to-time.

“Affiliate” means as to a Party, each person that is Controlled by a Party, that Controls such Party, or that is under common Control with such Party. “Control” means the direct or indirect ownership of more than fifty percent (50%) of the equity shares or interests (or the maximum equity ownership permitted by Applicable Law if such Party is not permitted to own more than 50%) entitled to vote for the directors or other management of such Party or the equivalent, but only for as long as such ownership relationship continues to exist. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

“Applicable Laws” means all U.S.A. and foreign 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 applicable from time-to-time to a Party’s performance of its obligations and/or exercise of its rights hereunder, including data protection/privacy laws, corrupt activities/illegal payment laws, and export/import laws.

“Azure Marketplace” means a Microsoft owned or operated platform through which offers may be presented to or acquired by customers located at https://azuremarketplace.microsoft.com/en-us/marketplace/, as it may be updated from time-to-time by Microsoft.

“Company” refers to a entity that: (a) has agreed to these Terms of Use with respect to DSaaS; (b) has Ordered, accesses, and/or uses (only in accordance with these Terms of Use) DSaaS through Company’s Microsoft Azure account; and (c) has a current Microsoft Azure Account.

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

“Company Data” means any and all content, materials, data, and information owned by Company or any third party (including any Data Subject) that is forwarded or otherwise provided by Company: (a) when accessing and/or using DSaaS or that Company derives from its use of DSaaS (such as, Company-specific reports on Company Data generated by DSaaS, if any) under these Terms of Use; or (b) otherwise provided to Trend Micro by Company in connection with Support Services. For the avoidance of doubt, Company Data may include Personal Data or other data or information regulated, protected, restricted, or controlled under Applicable Laws for the protection of data, content, or information.

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

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

“Data Subject” shall have the meaning set forth in the definition of Personal Data below in this Section.

“DSaaS” or “Deep Security as a Service” means Trend Micro’s Deep Security software that is hosted by the Microsoft Azure Service, which DSaaS may be accessed and used by Company for the Usage Metric that Company has Ordered from Microsoft from among Trend Micro’s listings on the Azure Marketplace. The term DSaaS also includes any User Documentation related to DSaaS, Enabling Software (if any), as well as any and all error corrections; bug fixes; updates; upgrades; new versions; or releases of DSaaS; and all content and functionality available from Trend Micro support site(s), that Trend Micro may elect to make available to customers of DSaaS, but the term DSaaS does NOT include the Microsoft Azure Service. For the avoidance of doubt, these Terms of Use do not grant Company any right to request or receive a binary code copy of any Trend Micro published software except for Enabling Software (if any) that may form a part of DSaaS.

“Deep Security as a Service Feedback” shall have the meaning set forth in Section 6.2.

“Different Terms” shall have the meaning set forth in Section 2.3.

“Enabling Software” means binary code software (but if and only if required by DSaaS’ User Documentation) that may be published by Trend Micro from time-to-time and licensed (but never sold) hereunder that is installed on Company’s device(s) that enables optimal access to and use of DSaaS (such as a management console, user interface, Trend Micro’s Smart Protection Server, and/or Deep Security Relay), and that does not perform functionality without the active right to access and use DSaaS. Enabling Software may or may not be identified in the User Documentation.

“End User” means any individual, entity, or person (directly or indirectly through another user) that: (a) accesses or uses DSaaS for Company’s benefit in accordance with these Terms of Use such as Company’s Administrator(s) or technical/support resources; or (b) otherwise accesses or uses DSaaS.

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

“Internal Business Use” means the internal business access and use of DSaaS solely by and for the direct benefit of Company specifically in connection with the security, protection, and/or integrity of Company’s systems, networks, devices, documents, emails, and/or other Company Data.

“IP Claim” means any suit, cause of action, or other legal proceeding filed/brought against Company by a third party (that is not an Affiliate of Company) in the courts of law, equity, or otherwise alleging or asserting that Company’s use of DSaaS (or component parts thereof, but not Third Party Technology or Microsoft Azure Services) provided hereunder directly infringes any patent or copyright of such third party, or makes unlawful use of a trade secret of such third party; provided, however, the term IP Claim will not include and Trend Micro will have no obligation hereunder unless each and every third party allegation or assertion is specifically made against DSaaS alone. In addition, the term IP Claim
will not include, and Trend Micro will have no obligation under Section 9 or otherwise with respect to, any suit, claim, cause of action, or other legal proceeding arising out of, based on, or related to the following: (a) any use of DSaaS by Company that is NOT in accordance with these Terms of Use, its User Documentation, or Applicable Laws; (b) any modification or programming to DSaaS (including components thereof) not made by Trend Micro; (c) Company Data and/or other materials that Company provides or makes available in connection with its use of DSaaS; (d) any redistribution of DSaaS, or use of DSaaS for the benefit of any third party not specifically permitted herein; (e) any use of DSaaS by Company after Trend Micro’s notice to cease use of DSaaS under Section 9.1.2; (f) Evaluation Service access and/or use; or (g) any third party allegation or assertion made against DSaaS (or any output thereof) that involves use of DSaaS in combination with any other software, service, business process, or technology offered by Microsoft or any third party.

“Microsoft” means Microsoft Corporation.

“Microsoft Azure Account” means Company’s active account on the Azure Marketplace.

“Microsoft Azure Service” means the cloud computing platform/infrastructure hosting service offered by Microsoft.

“Microsoft Terms and Policies” means all of the Microsoft terms, conditions, restrictions, and policies that may be applicable to Company resulting from the Order hereunder, including, but not limited to, the Microsoft Azure Agreement as well as Microsoft’s acceptable use policy, site terms, content terms, and service terms.

“Order” refers to the Microsoft ordering documentation (including a registration webpage, if applicable), pursuant to which Company obtains limited access to DSaaS through its Microsoft Azure Account.

“Party” means only each of Company and Trend Micro, and together, they are collectively the only “Parties.” All other persons are third parties.

“Personal Data” means one or more data elements relating to an identified or identifiable natural person (each a “Data Subject”) that is supplied by Company (either to or through DSaaS or otherwise in connection with Support Services) that can be used to identify, directly or indirectly, such Data Subject to the extent such data is regulated, protected, restricted, or controlled under Applicable Laws for the protection of data, content, or information. As may be defined under Applicable Laws, Personal Data may include one or more identifiers such as a name, an email address such as given name.surname@company.com, an identification number, location data, Internet Protocol (IP) address, a cookie ID, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that Data Subject.

“Process” shall have the meaning set forth in Section 4.3.

“Privacy Policy” of Trend Micro is available at https://www.trendmicro.com/en_us/about/legal/privacy-policy-product.html, which Privacy Policy is incorporated herein by reference and made a part hereof for all purposes and as may be amended and modified by Trend Micro from time-to-time.

“Smart Protection Network” or “SPN” means Trend Micro’s Smart Protection Network.

“Sub-processor” is described in Section 4.4.

“Support Services” are described in Section 5.1.

“Term” is described in Section 8.1.

“Third Party Technology” shall have the meaning set forth in Section 2.3.

“Trend Claim” means any suit, cause of action, governmental inquiry, or other legal or administrative proceeding filed/brought by, in connection with, or for the benefit of a Data Subject or other third party against Trend Micro in the courts of law or in equity, in a governmental investigation or proceeding, or otherwise arising out of or in connection with: (a) an assertion or allegation that Company failed to provide adequate notice to, and/or secure and maintain all rights, consents, and approvals of, each Data Subject or other third party source of Company Data as is required in Section 4; (b) an assertion or allegation that Company caused Company Data to be processed by DSaaS without Company having secured all necessary consents and approvals from the Data Subject or other third party source in a manner that violates the rights of, defamed, or otherwise caused harm to, to such Data Subject or third party, or otherwise violated Applicable Law; and (c) Trend Micro’s response to a subpoena, court order or other official inquiry of a government authority regarding Company Data (including data of any Data Subject) or Company’s use of DSaaS.


“Usage Metric” means Trend Micro’s standard of measurement published on the Microsoft Azure Marketplace for determining the permitted use and/or length of use as well as calculating the fees due for DSaaS. The applicable Usage Metric may be defined as a fixed period of time (such as per host hour, month, or year), number of users and/or device nodes, throughput volume or other measure, and/or other metering mechanism specified on Trend Micro’s listing on Microsoft Azure Marketplace. If DSaaS permits Company to exceed the Usage Metric that is Ordered by Company and Company has not agreed to auto-renew, then Company is responsible for promptly purchasing an additional quantity to true-up for any excess usage.

“User Documentation” means the printed, electronic, and/or online technical documentation and operating instructions and requirements generally made available by Trend Micro for DSaaS (and Enabling Software, if any) that is made available for the purpose of
supporting Company’s Internal Business Use of DSaaS. The User Documentation is incorporated herein and made a part hereof for all purposes; provided, however, Company understands and agrees that the published User Documentation may be revised from time-to-time by Trend Micro at its discretion, for among other reasons, changes or improvements to, or new versions of, DSaaS are released by Trend Micro as described in Section 2.7 without the need to amend these Terms of Use.

2. Grant for DSaaS; License to Enabling Software; Open Source; Security Acknowledgement; Evaluation.

2.1 Grant.

2.1.1 Grant of Access to and Use of DSaaS. On the terms and subject to Company’s continuous compliance with all of the conditions, exclusions, and restrictions set forth in these Terms of Use (including expiration or termination under Section 8 hereof) and the terms and conditions of any applicable Microsoft Terms and Policies to the extent applicable to Company in connection the Order, Trend Micro hereby grants only to Company, a non-exclusive, non-transferable, terminable (in accordance herewith or Applicable Law), worldwide (subject to exclusions and limitations that may be imposed by: (i) Microsoft or Trend Micro from time-to-time; and/or (ii) any Applicable Law, such as export/import laws) right to access and use DSaaS in accordance with its User Documentation only for Company’s Internal Business Use for such time and only for the Usage Metric as Ordered and paid for (in accordance with agreed payment terms) by Company until the expiration or termination of the foregoing grant in accordance herewith or Company’s Microsoft Azure Account is terminated, whichever shall first occur.

2.1.2 License to Enabling Software. If DSaaS is accompanied by Enabling Software, then by downloading or installing any Enabling Software on any computer, Company agrees not to use such Enabling Software for any purpose other than to facilitate and/or enable Company's access to and use of DSaaS. Subject to these Terms of Use, Trend Micro grants Company (solely for the Internal Business Use of Company) a non-exclusive, non-transferable, worldwide (subject to applicable export/import laws), terminable (in accordance herewith) license to install and use any Enabling Software on equipment owned or operated by or on behalf of Company, solely as needed to access and/or use DSaaS as described in the User Documentation; provided that, Company: (a) at all times complies with the terms and conditions of these Terms of Use; (b) ensures that anyone (including End Users) who accesses or uses the Enabling Software (accessed either locally or remotely) in connection with DSaaS (i) does so only on Company's behalf, and (ii) complies with the terms and conditions of these Terms of Use; (c) does not (i) install, access, use, copy, modify, or distribute the Enabling Software except as may be expressly permitted in User Documentation or these Terms of Use, and/or (ii) reverse assemble, reverse compile, otherwise translate, or reverse engineer the Enabling Software; and (d) does not use any of the Enabling Software's components, files, modules, or related licensed materials separately from the Enabling Software. Company acknowledges that the Enabling Software is copyrighted and licensed and not sold to Company under the terms of these Terms of Use and Company acknowledges that it is not hereunder granted any license, right, title, or interest in or to any patent, copyright, trade secret or other intellectual property of Trend Micro or any third party. If and to the extent only as maybe permitted in the User Documentation, Company may make a single copy of the Enabling Software for back-up, archival, and disaster recovery purposes. The Enabling Software (and back-up, archive, and disaster recovery copy) must be promptly un-installed and irretrievably destroyed when Company no longer has a right to access or use DSaaS hereunder. Trend Micro states that on the Effective Date of these Terms of Uses, no Enabling Software is published by or available in binary code form from Trend Micro for DSaaS — any subsequent change will be reflected in an amendment to the User Documentation.

2.2 Acceptable Use. Company will not make any use or disclosure of, or perform any acts with respect to, DSaaS other than as expressly permitted by its User Documentation, these Terms of Use, and/or the Ordered Usage Metric. Company may not and agrees that it will not, nor will Company authorize or permit third parties to:

(a) Disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Company’s use of DSaaS or otherwise use DSaaS in a way intended to avoid incurring fees or exceeding the Usage Metric limitations agreed to in an Order or otherwise attempt to gain unauthorized access to DSaaS.

(b) Modify, adapt, copy (except as permitted herein with respect to Enabling Software), translate, disassemble, decompile, or reverse engineer DSaaS; or any of its components or parts thereof), or otherwise attempt to derive the source code of, decrypt, modify, or create derivative works of, DSaaS or any part thereof (unless and only to the extent any foregoing restriction is prohibited by: (i) Applicable Laws without the possibility of written waiver, or (ii) Different Terms governing Third Party Technology that may be included in DSaaS); provided, however, configuring DSaaS within its policy parameters set forth in the User Documentation shall not constitute a modification or derivative work.

(c) License, sublicense, sell, resell, loan, rent, lease, transfer, assign, or distribute DSaaS (or any portion thereof) to any third party.

(d) Use DSaaS: (i) as a paid or unpaid service bureau or otherwise to provide services directly or indirectly to third parties (such as business processing outsourcing); (ii) to provide services to third parties on a time-share basis; or (iii) otherwise commercially exploit or make DSaaS available to any third party.

(e) Access, evaluate, observe, or use, DSaaS (or any of its components) to assist in the improvement and/or creation of a competitive product or service, or copy any ideas, features, functions, organization, structure, graphics, or user interface of DSaaS for any reason unless and only to the extent specifically permitted by Applicable Laws without the possibility of written waiver.

(f) Access or use DSaaS above the quantity and Usage Metric that Company has Ordered and paid for in accordance with applicable payment terms.

(g) Publish, provide, or otherwise make available to any third party, any benchmark tests or analysis relating to DSaaS without the express written permission of Trend Micro which may be withheld or conditioned at the sole discretion of Trend Micro; provided, however, Company may conduct internal benchmarking if Company is doing so in connection with an Evaluation Service in order to make a procurement decision with respect to DSaaS for its Internal Business Use.

2.3 Open Source and Other Third Party Technology. Enabling Software may come bundled or otherwise be distributed with free or open source or other third party software (herein “Third Party Technology”), that is subject solely to the agreement terms, conditions, limitations, and disclaimers of the specific license (each “Different Terms”) under which such Third Party Technology is redistributed to Company by Trend Micro and NOT these Terms of Use. Different Terms applicable to any Third Party Technology redistributed in any Enabling Software provided hereunder will be identified by Trend Micro in the User Documentation for, and/or in a “Read Me” or an “About” file in, the Enabling Software. THIRD PARTY TECHNOLOGY IS PROVIDED BY TREND MICRO “AS IS, WITH ALL FAULTS, AS AVAILABLE” WITHOUT
2.4 Security Acknowledgement. Certain Trend Micro products are designed to identify, block and/or remove applications, messages, and files that may compromise productivity or the performance and security of computers, systems, and/or networks. While Trend Micro uses commercially reasonable efforts to properly identify applications and files for detection by its products/software, however, given the constantly changing nature and volume of malicious, fraudulent, and unwanted electronic content, Trend Micro cannot and does not warrant or guarantee that DSaaS will detect, block, or completely remove or clean any or all applications, routines, and files that are malicious, fraudulent, or that Company does not use or want. Company understands and agrees that the success of its security efforts are dependent on a number of factors solely under Company’s control and responsibility such as: (a) the design, implementation, and use of a number of hardware and software security tools in a coordinated effort to manage present and future security threats; (b) the design, development and implementation of cybersecurity protocols and controls, network and systems protections, as well as monitoring and detection processes applicable to the foregoing; (c) the selection, implementation, and enforcement of appropriate internal security policies, procedures, and controls regarding access, security, encryption, use, and transmission of data; (d) the development of processes and procedures for the backup and recovery of any system, software, database, and any stored data; (e) conducting regular cybersecurity and privacy training for employees; (f) having adequate vendor risk management processes; and (g) diligently and promptly downloading and installing all updates to all products and software that are made available to Company by any publisher or manufacturer.

2.5 Evaluation of DSaaS. If Company has Ordered or otherwise entitled to an evaluation, trial, or test of DSaaS (herein “Evaluation Service”), then the provisions of this Section shall apply and shall control over any conflicting terms of these Terms of Use. On the terms and subject to the conditions of these Terms of Use, Company will have the right to conduct a test of the Evaluation Service for a period not to exceed thirty (30) days (unless otherwise agreed to in writing by Trend Micro or earlier terminated in accordance with Section 8), during which period Company may access and use the Evaluation Service solely for Company’s internal evaluation in a non-production environment (that is to say, an environment that does not process any actual Company Data or otherwise perform productive work) to decide whether to purchase the right to continue to access and use the Evaluation Service for its Internal Business Use. Evaluation Services are provided gratuitously by Trend Micro. Trend Micro has no obligation to provide any support for Evaluation Services, but Trend Micro may do so at its sole discretion. Company acknowledges that the Evaluation Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions, and/or data loss. CONSEQUENTIALLY, EVALUATION SERVICES ARE PROVIDED TO COMPANY SOLELY ON AN “AS IS, WITH ALL FAULTS” BASIS, AND TREND MICRO DISCLAIMS ALL WARRANTIES, CONDITIONS, AND LIABILITY IN CONNECTION WITH ALL EVALUATION SERVICES. COMPANY ASSUMES ALL RISK OF USE OF EVALUATION SERVICES. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE LIABILITY OF TREND MICRO, ITS LICENSORS, AND/OR MICROSOFT FROM ALL CLAIMS AND CAUSES OF ACTION SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS (USD$100.00) IN THE AGGREGATE. If Company accesses and/or uses DSaaS after expiration of Evaluation Service as set forth in this Section 2.5, Company agrees to pay for DSaaS thereafter in accordance with Trend Micro’s rates and fees published on the Azure Marketplace and the Parties agree that these Terms of Use shall apply to such extended paid use.

2.6 Ownership; Reservation of Rights. DSaaS is and remains the exclusive property of Trend Micro and/or its licensors. Except for Company’s access and use rights expressly agreed in these Terms of Use and the limited license granted in Section 2.1.2 to Enabling Software, no license or other rights in or to DSaaS or Trend Micro’s and its licensor’s intellectual property rights therein, are granted to Company. Company acknowledges and agrees that, as between the Parties, DSaaS and all ideas, methods, algorithms, formulas, processes, and concepts incorporated into DSaaS, and all revisions, corrections, modifications, enhancements, releases, upgrades, and other updates in, of, or to DSaaS, and all derivative works based on any of the foregoing, and any copies of the foregoing are the intellectual property of Trend Micro and reserved to and the sole property of Trend Micro or its licensors. Company will not alter or remove Trend Micro’s and its licensors’ copyright notices and all other proprietary legends from any part of DSaaS.

2.7 Changes and Improvements to DSaaS. Trend Micro reserves the right (at its discretion and without notice to or consent of any person) to continually improve, update, and offer new versions of DSaaS (e.g., infrastructure, features or functionality, security, technical configurations, and/or application features) during the Term, to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of use, and cyberthreat environment and capabilities. Any such improvement, change, and/or new version of DSaaS shall be governed by these Terms of Use and shall not be treated as a breach of these Terms of Use nor give Company a right to a full or partial refund of any monies paid or payable hereunder, but Company acknowledges that the use of some of which may be contingent upon Company’s agreement to additional terms.

3. Company Responsibilities.

3.1 Microsoft Azure Account Compliance. It is a condition precedent to any rights granted to Company under these Terms of Use that Company will comply with any and all applicable Microsoft Terms and Policies associated with its Microsoft Azure Account and Company is solely responsible for such compliance therewith by Company and its End Users. Trend Micro is not responsible for any content or aspect of other services provided to Company by Microsoft, including its selection, availability, reliability, security, and privacy policies adopted by Microsoft.

3.2 DSaaS Setup; Registration; Administrators. Company is responsible for architecting, selecting, configuring, registering, and securing operation of, as well as securing and maintaining connectivity and access to, DSaaS. Company must provide Trend Micro with all necessary or advisable information to allow Trend Micro to provision and make available DSaaS, as well as permit registration that requires, among
other things, an entity name and address, primary contact name and information, an email address, and other information as may be requested by Trend Micro from time-to-time. Registration information will be treated as the Confidential Information of Company, but is not Company Data. In accordance with the User Documentation, Company will provide (and maintain) to Trend Micro, contact information for Company's Administrator(s) who are the only authorized End Users permitted to provide information required to manage, configure, access, maintain, and support DSaaS for Company.

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

3.4 Internet Transmission. Company understands and agrees that no data transmission over the Internet by Company is guaranteed to be secure by Trend Micro. Trend Micro is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside Trend Micro’s control. Company is solely responsible for maintaining the security of its networks, servers, applications and access codes.

3.5 Fees. Company will timely pay to Microsoft the fees then-published by Trend Micro on the Azure Marketplace (plus any applicable Taxes) for access to and/or use of DSaaS in accordance with the Ordered Usage Metric and Microsoft Terms and Policies. Invoicing and collection of the fees and any applicable Taxes by Microsoft is done on behalf of Trend Micro for its benefit. Except as may be expressly set forth in Sections 8 and 9.1, the fees Company pays for access to and use of DSaaS are nonrefundable or otherwise subject to credit or offset. In no event, will Trend Micro provide, or be liable for, any refund of the fees Company pays for access to or use of any other services provided by Microsoft to Company. Trend Micro reserves the right to change or modify published fees for DSaaS in a manner and at such times at Trend Micro shall determine in its discretion, but only to the extent such change or modification is not inconsistent with then-published Azure Marketplace policies or limitations on such matters.

3.6 Taxes. Except as may be expressly stated to the contrary on Trend Micro’s Azure Marketplace listing, the fees and other charges described on ‘Trend Micro’s’ listing page and in the Order do not include foreign and domestic national, federal, provincial, state, municipal, or local sales, use, VAT, GST/GSM, excise, service, or similar transactional taxes (collectively “Taxes”) now or hereafter levied under Applicable Laws. Company will provide Trend Micro and/or Microsoft information (and Company hereby authorizes Microsoft to provide to Trend Micro information on Company’s Taxes) all required for the calculation, invoicing, and remittance of all applicable Taxes that Trend Micro reasonably requests to determine whether Trend Micro or Microsoft is obligated to collect and remit any Taxes from Company, including Company’s correct name, location, and sales tax or VAT/GST/GSM identification number where applicable. If Company is legally entitled to an exemption from the collection and remittance of any otherwise applicable Applicable Taxes, Company is responsible for providing Trend Micro/ Microsoft with legally-sufficient tax exemption certificates for each taxing jurisdiction. Otherwise, Company will be invoiced for, and pay, all Taxes as required by Applicable Law.

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

4.1 Responsibility for Company Data; Company Accounts. Company is solely responsible for the content of all Company Data and represents to Trend Micro (on an ongoing basis) and agrees that Company: (a) to the extent required by Applicable Law, has provided all necessary notices to every third party source (customers, employees, End Users, or other Data Subjects) of any Company Data (which may include Personal Data) of the scope and purpose of the processing of such Company Data by DSaaS; and (b) has procured and maintains all rights, consents, and approvals from every third party source of Company Data necessary under Applicable Laws to permit Company to submit Company Data to DSaaS and permit Company and Trend Micro to Process Company Data via DSaaS without violating any Applicable Laws or the rights of any third party source (including any Data Subject) or otherwise obligating Trend Micro to any third party. Trend Micro does not and will not assume any obligations with respect to Company Data or to Company’s use of DSaaS other than as expressly set forth in these Terms of Use (including the Trend Micro Privacy Policy) or as required by Applicable Law. With respect to Personal Data, the Parties acknowledge and agree that Company is and remains the Data Controller and Trend Micro is the Data Processor.

4.2 Certain Optional Features; Configuration; License to Use Company Data.

4.2.1 Certain Optional Features. As described in the User Documentation, Company is able to elect to disable optional features and functionality (such as the Smart Protection Network and/or Web Reputation Services) of DSaaS that may collect, upload, forward, and/or store Company Data (some of which may be Personal Data) that is necessary to permit Trend Micro to, among other things: (a) provide the features and functionality Company has selected; (b) improve the operation, security efficiency, and functionality of Trend Micro’s software and services including DSaaS; (c) provide the most effective, up-to-the-minute threat protection and features to detect or prevent the latest malicious behavior and potentially fraudulent websites and other Internet security risks; (d) collect information on potential security risks and URLs associated with websites, executable files, or content identified as potential malware vectors; and/or (e) continually improve Trend Micro’s threat databases and heuristics.

4.2.2 Configuration and/or Disabling of Optional Features. Company agrees that it is solely responsible for selecting Company’s Configuration (as defined below) of DSaaS in accordance with its User Documentation and ensuring that the selection thereof conforms to Company’s policies and procedures and agreements in all jurisdictions in which Company is generating and/or from which Company is accessing DSaaS. If Company believes that it may not want to avail itself of the capabilities, features, and functionality of one or more optional features of DSaaS, please consult the User Documentation at any time for more information on why and how Company may want to enable or disable such optional features and instructions on how Company can configure, restrict, limit, and/or disable
such optional feature(s) in order to cause Company Data to be Processed by DSaaS in a manner that meets Company’s specific needs (DSaaS as configured and deployed by Company is sometimes herein referred to as “Company’s Configuration”).

4.2.3 Right to Use Company Data. Only in accordance with, and to the extent authorized by, Company’s Configuration, Company hereby grants Trend Micro a limited, non-exclusive, royalty-free, paid-up, license to access and use Company Data: (a) as necessary for Trend Micro to provide DSaaS, Process Company Data, and provide Support Services to Company; (b) to maintain and improve the operation, security efficacy, and functionality of Trend Micro’s software and services including DSaaS (unless and only to the extent Company opts-out of such uses through Company’s Configuration); (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 continually improve Trend Micro’s subject-matter databases (unless and only to the extent Company opts-out of such uses through Company’s Configuration); (d) for administration of these Terms of Use and DSaaS; (d) to comply with its legal obligations under Applicable Laws; and (e) for purposes set forth in the Privacy Policy. In addition, Company acknowledges and agrees to the use or sharing (with third parties) by Trend Micro of aggregated, anonymized, de-identified, or pseudonymized Company Data (such that it no longer identifies Company, any other entity, or any Data Subject) as a part of a larger set of statistics or threat database(s) and that such data does not constitute the Confidential Information of Company.

4.3 Processing; Privacy. In accordance with the instructions provided by Company through Company’s Configuration of DSaaS, Trend Micro may collect, organize, copy, adapt or alter, record, store, retrieve, transfer, disclose/disseminate by transmission, and/or use (each a “Process”) Company Data in connection with DSaaS. Company understands and agrees that all or a part of the Processing may: (1) entail the transfer of Company Data (which may include Personal Data) outside of the country or jurisdiction in which the source of such Company data is located; and (2) take place on servers located in the United States of America, European Economic Area, and/or other countries or jurisdictions. Further, information about what Trend Micro does with, and how it protects, Company Data that Company provides to Trend Micro is set forth in the Privacy Policy and/or the User Documentation.

4.4 Sub-Processors. Company agrees that Trend Micro may share Company Data (including Personal Data) with third parties, including Affiliates of Trend Micro and its and their vendors, suppliers, and security partners (each a “Sub-Processor”) in support of the Processing of Company Data. Trend Micro will contractually restrict Sub-Processors access to Company Data to the extent needed for Trend Micro’s performance of its obligations and exercise of its rights under these Terms of Use and Trend Micro will impose written contractual obligations that are no less protective of the Company Data than those obligations set forth herein. Any such subcontract with a Sub-Processor shall not relieve Trend Micro of any of its obligations to Company under these Terms of Use.

5. Support Services.

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

5.2 Updates to Enabling Software. At its sole discretion, Trend Micro may provide periodic updates to the Enabling Software, if any. If available, such updates may include bug fixes, new features and/or enhancements. Company is solely responsible for deploying such updates at Company’s own cost as soon as possible. Trend Micro’s obligation to provide Support Services with respect to Enabling Software and DSaaS meeting its User Documentation depends upon Company’s prompt installation of any and all such updates that Trend Micro makes available to Company.

6. Confidentiality; Feedback.

6.1 Confidentiality/Non-Disclosure. Each Party hereto acknowledges that by reason of its relationship with the other Party hereunder, it may have access to confidential information and materials concerning the other Party’s business, technology, and/or products that is confidential to the other Party (“Confidential Information”). Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each Party agrees that it will not use such Confidential Information, except as authorized under these Terms of Use, and will protect Confidential Information at least to the same extent as a reasonable person would undertake to protect such Confidential Information. Neither Party may use the other Party’s Confidential Information except to perform its duties or exercise its rights under these Terms of Use including the Privacy Policy. The Confidential Information restrictions will not apply to information or data that is: (a) already known to the receiving Party at the time of access hereunder; (b) becomes publicly available through no wrongful act of the receiving Party; (c) independently developed by the receiving Party without benefit of the disclosing Party’s Confidential Information; (d) has been rightfully received from a third party not under obligation of confidentiality; (e) disclosed in any legal proceeding arising from or in connection with these Terms of Use; or (f) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure (only if legally permissible) adequate for the owning Party to take reasonable action to prevent such disclosure. Unless otherwise agreed to by both Parties, upon termination of these Terms of Use, each Party will return to, or irrevocably destroy, the other Party’s Confidential Information in its possession. In the event that the Parties hereto have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the Effective Date of these Terms of Use, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by these Terms of Use ONLY with respect to the subject matter hereof and the transactions undertaken pursuant hereto.

6.2 Feedback. Notwithstanding anything to the contrary: (a) Trend Micro will have no obligation of any kind with respect to any DSaaS-related comments, suggestions, design changes or improvements, that Company may elect to provide to Trend Micro in either verbal
or written form (collectively, “Deep Security as a Service Feedback”), and (b) Trend Micro and its Affiliates and licensors are hereby free to use any ideas, concepts, know-how or techniques, in whole or in part, contained in Deep Security as a Service Feedback: (i) for any purpose whatsoever, including developing, manufacturing, distributing, and/or marketing products and/or services incorporating Deep Security as a Service Feedback in whole or in part, and (ii) without any restrictions or limitations, including requiring the payment of any license fees, royalties, or other consideration.

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

7.1 Limited Warranty. In connection with DSaaS, Trend Micro warrants only to Company that DSaaS will substantially conform to its User Documentation under normal use and circumstances until the expiration or termination of Company’s right to access and use DSaaS under these Terms of Use. The foregoing limited warranty does not cover events or circumstances caused by accident, abuse or use of DSaaS in a manner inconsistent with these Terms of Use, the User Documentation, or other guidance provided by Trend Micro or resulting from events of Force Majeure. If it is established that Trend Micro has breached the above warranty after notice from Company, Trend Micro may, at its option: (a) use reasonable efforts to cure the breach; or (b) in the event Trend Micro cannot, after commercially practicable attempts to do so, achieve the remedy in (a) immediately above, either Trend Micro or Company may terminate these Terms of Use and Trend Micro will provide a refund of unused fees pre-paid by Company, if any, as of the effective date of such termination. To benefit from this warranty and the remedies stated herein, Company must report in writing to Trend Micro, the alleged breach of warranty with reasonable specificity within ten (10) days of its occurrence. The above remedies for breach of the foregoing warranty are Trend Micro's sole and exclusive obligation and liability to Company and Company's sole and exclusive right and remedy for Trend Micro’s breach of the foregoing warranty notwithstanding any other provision of these Terms of Use to the contrary.

7.2 Disclaimer of Warranty. EXCEPT AS SET FORTH IN SECTION 7.1, DSaaS AND SUPPORT SERVICES ARE PROVIDED “AS IS, WITH ALL FAULTS” AND “AS AVAILABLE.” TREND MICRO AND ITS AFFILIATES AND LICENSORS EACH SPECIFICALLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR QUIET ENJOYMENT. FURTHER, TREND MICRO DOES NOT REPRESENT OR WARRANT ANY OF THE FOLLOWING: (A) THAT DSaaS WILL GUARANTEE ABSOLUTE SECURITY OF ANY DEVICES, FILES, NETWORKS, AND ENDPOINTS DUE TO THE CONTINUAL DEVELOPMENT OF NEW/UNKNOWN THREAT TECHNIQUES FOR INTRUDING UPON AND ATTACKING DEVICES, FILES, NETWORKS, AND ENDPOINTS; (B) THAT DSaaS WILL BE ENTIRELY SECURE, OPERATE UNINTERRUPTED, ERROR-FREE, BE FAILSAFE, OR THAT COMPANY DATA OR COMPANY’S SYSTEMS WILL BE SECURE OR NOT OTHERWISE COMPROMISED OR DAMAGED; (C) THAT DSaaS RESULTS, ADVICE, REPORTS, OR DATA, WILL BE FREE FROM ERRORS OR COMPLY WITH ANY PARTICULAR LAW; (D) ANY RESULTS THAT COMPANY MAY ACHIEVE OR ANTICIPATE; OR (E) THAT DSaaS WILL PROVIDE COMPLETE AND ABSOLUTE PROTECTION AGAINST ANY OR ALL SECURITY THREATS OR OTHER POSSIBLE RISKS.

7.3 Limitations of Liability. TREND MICRO AND ITS AFFILIATES AND ITS AND THEIR LICENSORS AND SUPPLIERS WILL NOT BE LIABLE TO COMPANY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, COSTS OF COVER, OR DENIAL OF ACCESS OR DOWNTIME), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TREND MICRO AND ITS AFFILIATES, SUPPLIERS, AND LICENSORS WILL NOT BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING FROM OR IN CONNECTION WITH: (A) COMPANY’S USE OR INABILITY TO ACCESS OR USE DSaaS, INCLUDING AS A RESULT OF ANY (1) TERMINATION OR SUSPENSION OF THESE TERMS OF USE OR COMPANY’S USE OF, OR ACCESS TO, DSaaS, (2) DISCONTINUATION OF, OR MODIFICATION TO, ANY OR ALL OF MICROSOFT AZURE SERVICE, DSaaS, OR SUPPORT SERVICES, OR (3) ANY DOWNTIME OF ANY OR ALL PORTION OF DSaaS OR MICROSOFT AZURE SERVICE FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES, MICROSOFT AZURE PLATFORM OR INTERNET FAILURES, OR OTHER INTERRUPTIONS; (B) ASSERTIONS OR CLAIMS THAT DSaaS DID NOT PROTECT COMPANY OR ITS SYSTEMS AGAINST ALL SECURITY BREACHES OR ANY OR ALL POSSIBLE SECURITY THREATS, MALFUNCTIONS, MALICIOUS CODE OR OTHER VULNERABILITIES; (C) ERRORS IN DSaaS CAUSED BY VULNERABILITIES, VIRUS INFECTION, WORM OR OTHER MALICIOUS CODE; (D) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (E) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY COMPANY IN CONNECTION WITH THESE TERMS OF USE OR COMPANY’S USE OF, OR ACCESS TO, DSaaS; OR (F) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS, OR FAILURE TO STORE ANY COMPANY DATA OR OTHER DATA/INFORMATION.

7.4 Maximum Liability - Direct Damages. IN ALL EVENTS OR CIRCUMSTANCES TREND MICRO AND ITS SUPPLIERS (INCLUDING MICROSOFT) AND LICENSORS LIABILITY TO COMPANY FOR DAMAGES RELATED TO OR ARISING FROM ALL RELATED AND UNRELATED CAUSES OF ACTION, CLAIMS, SUITS, AND OTHER LEGAL PROCEEDINGS OF ANY KIND OR NATURE (REGARDLESS OF WHETHER BASED ON EXPRESS/IMPLIED/STATUTORY WARRANTY, GUARANTEE, CONDITION, MISREPRESENTATION, CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), UNDER ANY CIVIL CODE, AND/OR ANY OTHER OR EQUITABLE OR LEGAL THEORY) ARISING FROM OR RELATED TO: (1) THESE TERMS OF USE; (2) THE RELATIONSHIP OF PARTIES; AND/OR (3) THE PROVISION/SUPPLY OF DSaaS, UPDATES, AND/OR SUPPORT SERVICES, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES OF ANY KIND OR NATURE IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE (AND NOT PER INCIDENT OR PER CLAIMANT) FOR ALL CLAIMS AND CAUSES OF ACTION, THE TOTAL FEES AND OTHER AMOUNTS PAID BY COMPANY FOR DSaaS HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE FIRST GIVING RISE TO A CLAIM OR CAUSE OF ACTION.

7.5 Exceptions; Unenforceability. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 7 TO THE CONTRARY, TREND MICRO’S LIABILITY SHALL NOT BE LIMITED UNDER THIS SECTION 7 IN THE EVENT OR CIRCUMSTANCE
OF: (A) PERSONAL INJURY OR DEATH ARISING FROM TREND MICRO’S NEGLIGENCE; (B) EVENTS OR CIRCUMSTANCES ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TREND MICRO; (C) BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6.1; OR (D) PAYMENT OF MONIES BY TREND MICRO UNDER SECTION 9.1 (TREND MICRO INDEMNITY). THE WAIVERS, DISCLAIMERS, LIMITATIONS, AND/OR EXCLUSIONS CONTAINED HEREIN THIS SECTION 7 SHALL APPLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAWS BY WRITTEN WAIVER, DISCLAIMER, LIMITATION, AND/OR EXCLUSION UNDER APPLICABLE LAW, REGARDLESS OF WHETHER OR NOT TREND MICRO, ITS AFFILIATES, LICENSORS, AND/OR SUPPLIERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, BUT NOTHING HEREIN THIS SECTION 7 IS INTENDED TO AND SHALL NOT LIMIT TREND MICRO, ITS AFFILIATES, LICENSORS, AND/OR SUPPLIERS LIABILITY TO THE EXTENT OR IN A MANNER THAT WOULD BE UNENFORCEABLE OR IMPERMISSIBLE UNDER APPLICABLE LAW.

8. Term and Termination.

8.1 Term; Auto-Renewal. These Terms of Use and Company’s access to DSaaS will become effective as of the date of the applicable Order is accepted by Microsoft and DSaaS is made available to the Company and shall continue in effect thereafter as set forth in the applicable Order and these Terms of Use until such outstanding Order for DSaaS is completed (the “Term”), unless earlier terminated in accordance with this Section and/or these Terms of Use. Unless otherwise stated in the Microsoft Terms and Policies or prohibited under Applicable Law, Company’s rights to access and use DSaaS will auto-renew upon completion of the Order that Company auto-renewal Term selected by Company (unless Company has previously opted-out of auto-renewal of DSaaS with Microsoft). Any auto-renewal Term will be priced at the fees and on the Terms of Use for DSaaS then-published on the Azure Marketplace.

8.2 Suspension and Termination by Trend Micro. In addition to any rights to suspend or terminate Company’s access and use of DSaaS (in whole or in part) under Microsoft Terms and Policies, Trend Micro may suspend or terminate Company’s right to use DSaaS (in whole or in part) at any time upon written notice if Trend Micro determines that: (a) Company or one or more of its End Users of DSaaS (i) poses a security risk to DSaaS, the Microsoft Azure Service, or any third party, (ii) may adversely impact DSaaS, the Microsoft Azure Service, or any third party, (iii) may subject Trend Micro, its Affiliates, its licensors, or any third party to liability, or (iv) may be fraudulent; (b) Company is in breach of these Terms of Use (for avoidance of doubt, Company's failure to pay any fees due for DSaaS on a timely basis will be deemed a material breach of these Terms of Use) and/or in breach of Microsoft Terms and Policies or Company no longer has a Microsoft Azure Account; or (c) Company is in breach of or non-compliance with any of its agreements in Sections 2.1, 2.2, or 4.1. Company will cease use of DSaaS identified in such notice(s) during any period of suspension, or upon termination of these Terms of Use or other termination of Company’s right to use such DSaaS. For any termination or suspension by Trend Micro in accordance with the foregoing, Trend Micro will not provide, or be liable for, any refund or proration of fees.

8.3 Termination for Convenience by Trend Micro. The Parties agree that Trend Micro may terminate these Terms of Use and the provision of a DSaaS for its convenience (for any reason or for no reason) by giving Company at least thirty (30) days prior written notice (however, Trend Micro may immediately terminate these Terms of Use for reasons set forth in Section 9.1) and will refund the unused fees (if any) pre-paid by Company for access to DSaaS for the terminated time period. The Parties agree that any termination hereof in accordance with this Section 8.3 shall NOT be treated as a breach of these Terms of Use by Trend Micro or Company and shall not entitle the other Party to any claim for damages, losses, or expenses of any kind or nature arising from or related to such termination.

8.4 Termination by Company. Company may terminate for its convenience, these Terms of Use and/or Company’s use of DSaaS at any time with written notice to Trend Micro, in which event Company will NOT be entitled to a refund or credit of unused fees (if any) pre-paid by Company for access to DSaaS. Only if Company terminates these Terms of Use for a material breach by Trend Micro (after giving Trend Micro at least twenty (20) days prior written notice and an opportunity to cure such breach during such notice period) of these Terms of Use, Company will be entitled to receive a refund from Trend Micro of the applicable unused fees (if any) pre-paid by Company for access to DSaaS.

8.5 Suspension and Termination by Microsoft. Company acknowledges that the Microsoft Terms and Policies include rights in Microsoft to suspend and terminate Company’s Microsoft Azure account, which will suspend or terminate Company’s access to, and use of, DSaaS. In such event, Trend Micro will not provide, or be liable for, any refund, including fees pre-paid by Company for access to and use of DSaaS.

8.6 Company’s Termination Duties. Upon expiration or termination of these Terms of Use and/or Company’s use of DSaaS for any reason or no reason, Company will: (a) remove the affected DSaaS from Company’s Microsoft Azure account and cease any access and use of DSaaS; and (b) irrevocably destroy all copies in Company’s possession or control of the Enabling Software, including any User Documentation provided by Trend Micro. Upon request, Company will certify in writing that the foregoing has occurred. Termination does not relieve Company from Company’s obligation to pay fees and Taxes that remain unpaid.

8.7 Survival. Upon termination or expiration of these Terms of Use and regardless of reason therefor, the following Sections shall survive such termination or expiration: Sections 1, 2.2, 2.3, 2.4, 2.6, 3.4, 4, 6, 7, 8, 9, and 10 and any other provision that expressly states that its terms and conditions shall survive the expiration or termination of these Terms of Use.

9. Indemnity.

9.1 Trend Micro Indemnity.

9.1.1 IP Indemnity. Trend Micro (at its cost) will defend ONLY Company from each IP Claim and indemnify Company from the resulting costs and damages with respect to each such IP Claim finally awarded against Company that are specifically attributable to such IP Claim or those amounts agreed to by Trend Micro in a monetary settlement attributable to such IP Claim, subject always to the conditions, qualifications and limitations in this Section 9. The indemnity provided in this Section 9.1 for the benefit of Company states Trend Micro's
exclusive obligation and entire liability to Company and Company’s exclusive right and remedy with respect to IP Claims. This indemnity is personal to Company and may not be assigned, transferred, or passed through to any third party. With respect to this Section 9.1, Trend Micro is the indemnitor Party and Company is the indemnitee Party.

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

9.2 Company Indemnity. Company (at its cost) will defend ONLY Trend Micro from each Trend Claim and indemnify Trend Micro from the resulting costs and damages with respect to each such Trend Claim finally awarded against Trend Micro that are specifically attributable to such Trend Claim or those amounts agreed to by Company in a monetary settlement of such Trend Claim, subject always to the conditions, qualifications and limitations in this Section 9. The indemnity provided in this Section 9.2 for the benefit of Trend Micro is Company’s exclusive obligation and entire liability to Trend Micro and Trend Micro’s exclusive right and remedy with respect to Trend Claims. This indemnity is personal to Trend Micro and may not be assigned, transferred, or passed through to any third party. With respect to this Section 9.2, Company is the indemnitor Party and Trend Micro is the indemnitee Party.

9.3 Conditions of Indemnification. The indemnification obligations of each indemnitor Party are subject to and conditioned on the indemnitee Party: (a) providing prompt written notice to the indemnitor Party of an IP Claim or Trend Claim (as the case may be); (b) tendering to the indemnitor Party of the sole and complete control and authority over the defense, negotiations, litigation and/or any settlement of the IP Claim or Trend Claim (as the case may be); and (c) providing full and timely cooperation with the indemnitor Party and providing indemnitor Party with all reasonably requested information, cooperation and assistance at indemnitor Party’s expense. Indemnitee Party may participate in defense of the matter at its cost with counsel of its selection. Without indemnitee Party’s consent, indemnitor Party will not settle with respect to indemnitee Party, any IP Claim or Trend Claim (as the case may be) to the extent such settlement requires that indemnitee Party admit its liability or pay any money with respect to such IP Claim or Trend Claim (as the case may be). Indemnitor Party is not responsible for any costs, expenses, settlement, or compromise incurred or made by indemnitee Party without indemnitor Party’s prior written approval.


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

10.2 Interpretation. The headings within these Terms of Use are for convenience only and will not affect the interpretation of these Terms of Use. “Include”, “includes”, and “including” shall be interpreted as introducing a list of examples which do not limit the generality of any preceding words or any words in the list of examples.

10.3 No Waivers. The failure by either Party to enforce any provision of these Terms of Use will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. To be effective, all waivers must be in writing, specifying the provision and actions or inactions being waived, and signed by the Parties.

10.4 Export/Import Control. In connection with these Terms of Use, the access, use, export or re-export of DSaaS and related technical data and services (collectively "Controlled Technology") is subject to Applicable Laws with respect to the export (including "deemed export" and "deemed re-export" regulations) and import of Controlled Technology by Company and/or its End Users. Company agrees that it will at all times comply with each Applicable Law (now or hereafter in effect) that applies to direct/indirect export, re-export, or import of Controlled Technology by Company and/or its End Users and/or the performance of Company and/or its End Users hereunder that: (1) requires a license to, or otherwise prohibits the, export, re-export, import, diversion, or disclosure of such Controlled Technology; (2) prohibits or restricts sale, use, or access to certain technology/goods/services, to specified countries, and/or by defined persons; or (3) restricts or prohibits end-use of such Controlled Technology related to the development, production, use, or proliferation of nuclear, chemical or biological weapons, missiles, or other weapons of mass destruction. Company represents and warrants to Trend Micro that neither Company nor any of its End Users are under the control of, located in, or a resident or national of any country or region subject to any embargo or applicable trade sanction and are not a prohibited person or prohibited entity as defined in any Applicable Law.

10.5 Governing Law; Venue/Jurisdiction. The Parties agree that these Terms of Use (and any amendments, additions, renewals, supplements or modifications hereto) and any questions, disputes, claims, causes of action, and proceedings based on, arising out of, or related to, these Terms of Use, or its validity, interpretation, construction, or termination or the relationship, rights, duties, or performance of the Parties arising from or related in any way hereto, will be governed by and construed in accordance with the laws of the State of New York (USA) and controlling U.S. federal law applicable to agreements entered into and to be performed wholly therein, excluding its conflicts of laws principles and rules. These Terms of Use will not be interpreted or governed by the Uniform Computer Information Transactions Act (UCITA) or the United Nations Convention on Contracts for the International Sale of Goods, the application of each of which is hereby expressly excluded. The Parties mutually agree to and do hereby irrevocably submit and consent to the sole and exclusive in personam jurisdiction of: (a) the United States District Court for the Southern District of New York, located in the County of New York, but if such court shall determine that it does not and cannot have subject matter jurisdiction over such action, matter, or proceeding; then to, (b) the Supreme Court of the State of New York, located in the County of New York that will have such sole and exclusive in personam jurisdiction over such action, matter, or proceeding. In Canada, the following language shall apply hereto: The Parties have required that these Terms of Use be drawn up in English and have also agreed that all notices or other documents required by or contemplated in these Terms of Use be written in English. Les Parties ont exigé que ces conditions d'utilisation soient...
10.6 **Government Usage.** DSaaS (including any component software) and accompanying User Documentation have been developed solely at private expense by Trend Micro and/or its suppliers/licensors, consisting of commercially-available items, commercially-available computer software, commercially-available hardware, technical documentation, and/or commercially-available user documentation with the same rights and restrictions generally applicable to DSaaS. Access and use of DSaaS by any Government Agency may be subject to mandatory applicable laws; provided, however, except for the limited right to access and use DSaaS granted in Sections 2.1.1 and 2.1.2 above, no right, title, or interest in or to any software, hardware, binary code, or service (or updates and documentation) is granted or transferred hereunder to any Government Agency accessing and/or using DSaaS. If any Government Agency requires or needs greater or different rights in or to access and/or use DSaaS other than those rights that are granted in these Terms of Use, the Parties will discuss such additional requirements and the additional fees/charges applicable thereto, and if additional or different rights are agreed, the parties will enter into a specific written agreement with respect thereto. In this Section 10.6, “**Government Agency**” shall mean a national, federal, provincial, state, municipal, and/or local agency or entity that Orders through the Azure Marketplace (for its Microsoft Azure Account) for the right to access/use a DSaaS under these Terms of Use.

10.7 **Notices.**

10.7.1 **If to Company.** Trend Micro may provide any notice to Company under these Terms of Use by: (a) posting a notice on [https://success.trendmicro.com/product-support/deep-security-as-a-service](https://success.trendmicro.com/product-support/deep-security-as-a-service) (the “**Trend Micro Site**”); or (b) sending a message to the email address then associated with Company’s Microsoft AzureAccount and Company hereby consents and directs Microsoft to provide such email address to Trend Micro when requested. Notices Trend Micro provides by posting on the Trend Micro Site will be effective upon posting and notices that Trend Micro provides by email will be effective when Trend Micro sends the email. It is Company’s responsibility to keep Company’s email address current.

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

10.8 **Severability; Enforcement.** The Parties agree that the unenforceability or invalidity of any term or provision of these Terms of Use shall not impair the enforceability or validity of any other part of these Terms of Use. In the event that any term or provision of these Terms of Use conflicts with the governing law under which these Terms of Use is to be construed or if any such term or provision is held invalid or unenforceable in whole or in part by a court with jurisdiction over the Parties, the Parties agree that the court making such determination shall have the power, and the Parties hereby request that such court exercise such power, to modify, amend, or restate any such unenforceable term or provision of these Terms of Use in lieu of severing such unenforceable term or provision in its entirety, whether by rewriting the offending term or provision, deleting any or all of the offending term or provision, adding additional language to these Terms of Use, or by making such other modifications as it deems appropriate that is valid and enforceable that and that comes closest to expressing the original intention of the Parties to the greatest lawful extent under these Terms of Use.

10.9 **Force Majeure.** If Trend Micro’s performance of any of its obligations under these Terms of Use is affected or prevented by events, conditions, and/or circumstances beyond Trend Micro’s control, including, without limitation, war, terrorism, or armed conflict; cyber-attacks, network intrusions, “zero day” threats, state-actor hacking, or denial-of-service attacks; telecom/internet congestion, slowdown or outage; computer, networks, or systems failure or delays involving hardware or software not within Trend Micro’s possession and control; or labor strike or boycotts; material in such such event/condition, Trend Micro will be excused from such performance, provided that Trend Micro: (a) provides prompt written notice of such event/condition, the nature of such event/condition and the expected duration of such event/condition to Company; (b) takes all steps reasonably necessary under the circumstances to mitigate the effects of the interfering event/condition; and (c) resumes performing its affected obligations promptly following the removal of such interfering event/condition. Trend Micro will be relieved from performing its affected obligations under these Terms of Use. Such event/condition and any such delay or failure shall not constitute a breach of these Terms of Use by Trend Micro.

10.10 **Independent Contractors.** Nothing in these Terms of Use is intended or shall be construed to create or establish any agency, partnership or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder, and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. Neither Party has any authority to act as agent for, or to incur any obligations on behalf of or in the name of, the other Party or its Affiliates.

10.11 **Third Party Beneficiaries.** All disclaimers, limitations of damages and remedies, and exclusions and limitations of liabilities in these Terms of Use that are applicable to Trend Micro also extend to and apply in respect of Trend Micro’s Affiliates, suppliers (specifically including Microsoft), and licensors as third party beneficiaries. Except as set forth in the immediately preceding sentence, these Terms of Use are entered into solely between and for the benefit of, and may be enforced only by, the Parties hereto and no third party shall have any right/benefit hereunder, whether arising hereunder, under any statute now or hereafter enacted (such as Contracts (Rights of Third Parties) Act of 1999 in the UK and similar laws enacted in Ireland, Singapore, New Zealand, Hong Kong S.A.R., and certain states of Australia, the application of each of which is hereby barred and disclaimed), or otherwise. Except as set forth in the first sentence of this Section, these Terms of Use do not, and shall not be deemed to, create any express or implied rights, remedies, benefits, claims, or causes of action (legal, equitable or otherwise) in or on behalf of any third parties including employees, independent consultants, agents, suppliers, and Affiliates of a Party, or otherwise create any obligation or duty to any third party.