



## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BAA”) is an addendum to the Global Products Agreement or any other negotiated and signed terms and conditions agreed to between the Parties that specifically incorporates this BAA by reference (each referred to herein as, the “Agreement”) between Trend Micro Incorporated, a California corporation or an Affiliate thereof (each referred to herein as “Trend”) and Company. Trend and Company may each be referred to as a “Party” and collectively as the “Parties.” This BAA supersedes all prior or contemporaneous agreements, representations, and understandings, whether written or oral, relating to the Use and Disclosure of Protected Health Information. In the event of any conflict between this BAA and the Agreement, this BAA shall control with respect to Protected Health Information.

### 1. APPLICABILITY.

**1.1. Scope.** With respect to Products to be provided under the Agreement, this BAA shall be applicable only if and to the extent that Company is a Covered Entity or a Business Associate under HIPAA that makes available Protected Health Information as a part of Company Data it provides and or otherwise makes available to Trend under the Agreement and Trend otherwise meets the definition of a Business Associate under HIPAA with respect to such Protected Health Information.

### 2. DEFINITIONS.

**2.1.** Capitalized terms used but not otherwise defined in this BAA shall have the meanings given to them in HIPAA, as amended, and its implementing regulations, including 45 CFR. Parts 160 and 164 (the “HIPAA Rules”), as such laws and regulations may be amended from time to time:

“CFR” shall mean the Code of Federal Regulations referencing specific HIPAA provisions.

“Company” is the corporation, company, or other legal entity (either public or private) listed on the Trend certificate for the Products.

“Company Data” means any and all content, materials, data, and information: (a) uploaded or transmitted by or on behalf of the Company to the Product environment provided hereunder; and/or (b) otherwise supplied to Trend in the course of the Company’s use or receipt of Products. Company owns all rights, title and interest in and to Company Data.

“HIPAA” collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and future modifications or amendments to any of the foregoing.

“Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103 including any electronic Protected Health Information (ePHI) as defined in the Privacy Rules, provided that it is limited to such ePHI that is received by Trend from, or created, received, maintained, or transmitted by Trend on behalf of, Company: (a) through the Use of any Product by Company, or (b) through Trend’s performance of any managed service or support service under the Agreement.

“Product(s)” means and includes any software, hardware, services and/or maintenance that are ordered under this Agreement (but never technical services described in a professional services statement of work) as set out in the relevant Trend certificate during the Term. Product(s) does not include any products licensed under Trend’s Consumer End User License Agreement.

“Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on Trend’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information.

### 3. RESPONSIBILITIES OF TREND WITH RESPECT TO PHI.

**3.1. Limitations on Use and Disclosure.** Trend shall not Use and/or Disclose Protected Health Information other than as permitted or required by this BAA and/or as otherwise Required by Law. Trend shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request. Trend shall not violate the HIPAA prohibition on the sale of Protected Health Information.

**3.2. Safeguards.** Trend shall: (a) utilize appropriate safeguards to prevent the Use and Disclosure of Protected Health Information other than as provided for in this BAA; and (b) comply with the applicable requirements of the Security Rule with respect to the electronic Protected Health Information. Trend shall comply with the applicable requirements of the HIPAA Privacy Rule to the extent such requirements apply to Business Associates. Trend will implement and will maintain appropriate administrative, physical and technical safeguards (including written policies and procedures) to prevent the unauthorized Use or Disclosure of electronic PHI that it creates, receives, maintains, or transmits on behalf of Company as required by the Security Rule and the HITECH Act.

**3.3. Reporting.** Trend shall report to Company, without unreasonable delay, but in no event more than 5 business days of discovery: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this BAA of which Trend becomes aware; (2) any Security Incident of which it becomes aware, but for the avoidance of doubt, reporting of Unsuccessful Security Incidents shall not be required hereunder unless reporting is specifically required by Products purchased under the Agreement; and/or (3) any Breach of Company's Unsecured Protected Health Information that Trend may discover in accordance the Breach Notification Rule, see further 45 CFR §§ 164.404(c)(2) and 410. Trend shall cooperate with Company in investigating any Breach and in meeting Company's obligations under HIPAA. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting to third parties will be made consistent with Trend's and Company's legal obligations. Notification(s) under this Section, if any, will be delivered to contacts identified by Company from time-to-time by any means Trend selects, including through e-mail, and shall include the following information: (a) a brief description of what occurred, the date of the breach and the date of discovery of the Breach, if known; (b) a description of the type of Unsecured Protected Health Information involved; (c) identification, if known, of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Trend, to have been accessed, acquired, or disclosed during such Breach; (d) steps that Individuals can take to protect themselves from potential harm from the Breach; and (e) a description of actions taken by Trend to investigate the Breach, mitigate harm to individuals, and prevent further Breaches, see 45 CFR § 164.404(a)(2). Trend's obligation to report under this Section is not and will not be construed as an acknowledgement by Trend of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

**3.4. Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Trend shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Trend to agree in writing to: (a) the same or more stringent restrictions and conditions that apply to Trend with respect to such Protected Health Information; and (b) comply with the applicable requirements of 45 CFR § 164 subpart C of the Security Rule. Trend remains responsible for its Subcontractors' compliance with the obligations of Trend in this BAA.

**3.5. Mitigation.** Trend agrees to mitigate, to the extent practicable, any harmful effect that is known to Trend from a Use or Disclosure of PHI by Trend inconsistent with its obligations under this BAA.

**3.6. Disclosure to the Secretary.** Trend shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Company to the Secretary of the Department of Health and Human Services for purposes of determining Company's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.

**3.7. Accounting of Disclosure.** Trend, at the request of Company, shall within 15 days make available to Company such information relating to Disclosures made by Trend as required for Company to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.

**3.8. Designated Record Set.** The Parties agree that Trend will not maintain PHI in a Designated Record Set for Company in connection with the Agreement and/or this BAA. If Trend shall specifically agree by amendment of the Agreement to maintain a Designated Record Set for Company, then Trend shall provide access to Company of such Designated Record Set, and permit amendment of Protected Health Information therein contained in accordance with 45 CFR §§ 164.524 and 526.

**3.9. Performance of a Covered Entity's Obligations.** To the extent Trend is to carry out a Covered Entity obligation under the Privacy Rule, Trend shall comply with the requirements of the Privacy Rule that apply to Company in the performance of such obligation. Nothing in this BAA obligates Trend to specifically carry out any Privacy Rule obligations. Company is required to specify in writing any future Privacy Rule obligations. Further, Trend's Products may not be subject to certain Privacy Rule obligations

### **3. COMPANY RESPONSIBILITIES WITH RESPECT TO PROTECTED HEALTH INFORMATION.**

**3.1 No Impermissible Requests.** Company shall not request Trend to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless otherwise permitted by HIPAA for a Business Associate).

**3.2 Contact Information for Notices.** Company hereby agrees that any reports, notification, or other notice by Trend pursuant to this BAA may be made electronically. Company shall provide contact information to Trend in such location or method as updated by Trend from time-to-time and shall ensure that Company's contact information remains up-to-date during the term of the Agreement. Contact information must include name of individual(s) to be contacted, title of individuals(s) to be contacted, e-mail address of individual(s) to be contacted, name of Company organization, and, if available, Company's contract number(s). Failure to submit and maintain the aforementioned contact information may delay Trend's ability to provide Breach notification under this BAA.

**3.3 Safeguards and Appropriate Use of Protected Health Information.** Company is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Company's obligation to:

**3.3.1** Not include Protected Health Information in: (a) information Company submits to technical support personnel through a technical support request or to community support forums; and (b) Company's address book or directory information.

**3.3.2** Implement privacy and security safeguards in the networks, systems, applications, and software Company controls, configures, and uploads in connection with Products.

**3.3.3** Ensure that any Company employee/contractor communicating with Trend about Company PHI or accessing Trend systems that may contain such PHI have met all requirements specified by HIPAA (e.g., clearances and training).

**3.3.4** Notify Trend of any limitation(s) in the notice of privacy practices of Company under 45 § CFR 164.520, to the extent that such limitation may affect Trend's Use or Disclosure of Protected Health Information.

**3.3.5** Notify Trend of any changes in, or revocation of, the permission by an individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect Trend's Use or Disclosure of Protected Health Information.

**3.3.6** Notify Trend of any restriction on the Use or Disclosure of Protected Health Information that Company has agreed to or is required to abide by under 45 § CFR 164.522, to the extent that such restriction may affect Trend's Use or Disclosure of Protected Health Information.

#### **4. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.**

**4.1 Trend's Performance of its Obligations.** Except as otherwise limited in this BAA, Trend may Use and Disclose PHI in order to perform functions, activities, and/or services agreed by the Parties and undertaken by Trend as described in the Agreement, to the extent that such Use or Disclosure does not violate the Privacy Rule if done by Company. Trend agrees to not Use or disclose PHI other than as permitted or required by this BAA or as Required by Law.

**4.2 Management, Administration, and Legal Responsibilities.** Except as otherwise limited in this BAA, Trend may Use and Disclose Protected Health Information for the proper management and administration of Trend and/or to carry out the legal responsibilities of Trend, provided that any Disclosure may occur only if: (a) Required by Law; or (b) Trend obtains written reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies Trend of any instances of which it becomes aware in which the confidentiality of the Protected Health Information has been breached.

**4.3 Reporting of Violations.** Trend is authorized to Use and Disclose PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

**4.4 Data Aggregation.** Unless otherwise prohibited herein, Trend may use PHI to provide Data Aggregation services to Company as permitted by HIPAA.

#### **5. TERM; TERMINATION.**

**5.1 Term.** This BAA shall continue in effect until the earlier of: (a) termination by a Party for breach as set forth in Section 5.2, or (b) expiration or termination of the Agreement.

**5.2 Termination for Breach.** Upon written notice, either Party immediately may terminate this BAA if the other Party is in material breach or default of any obligation in this BAA. Either Party may provide the other a 10 calendar day period to cure a material breach or default within such written notice.

#### **5.3 Return, Destruction, or Retention of Protected Health Information Upon Termination.**

**5.3.1** Upon expiration or termination of this BAA, Trend shall return or destroy all Protected Health Information received from Company, created by Trend, or otherwise in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Agreement or otherwise at the express written direction from the Company. This provision shall also apply to Protected Health Information that is in the possession of Subcontractors of Trend.

**5.3.2** If Trend determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this BAA, Trend shall inform Company of the conditions that make return or destruction infeasible. In that event, Trend shall extend the protections of this BAA to such Protected Health Information (and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible) for so long as Trend maintains such Protected Health Information.

**5.3.3** Trend and Company's respective rights and obligations under this Section 5.3 shall survive the termination of this BAA.

#### **6. GENERAL PROVISIONS.**

**6.1 Interpretation.** The Parties intend that this BAA be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state laws. Except where this BAA conflicts with the Agreement, all other terms and conditions of the Agreement remain unchanged. Any captions or headings in this BAA are for the convenience of the Parties and shall not affect the interpretation of this BAA.

**6.2 BAA; Waiver.** This BAA may not be modified or amended except in a writing duly signed by authorized representatives of each of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.

**6.3 No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything in this BAA confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

**6.4 No Assignment Permitted.** This BAA may not be assigned, in whole or in part, without the express written consent of the Parties (which consent may be withheld discretion of each Party), and any attempted assignment in violation of this provision shall be void.

**6.5 Severability.** In the event that any provision of this BAA is found to be invalid or unenforceable, the remainder of this BAA shall not be affected thereby, but rather the remainder of this BAA shall be enforced to the greatest extent permitted by law.

**6.6 No Agency Relationship.** It is not intended that an agency relationship (as defined under the federal common law of agency) be established hereby expressly or by implication between Trend and Company under HIPAA or the Privacy Rule, Security Rule, or Breach Notification Rule. No terms or conditions contained in this BAA shall be construed to make or render Trend an agent of Company.

**6.7 Survival.** Sections 3 (Responsibilities of Trend with Respect to PHI), 4 (Permitted Uses and Disclosures of PHI), 5.3 (Return, Destruction, or Retention of PHI), and 6 (General Provisions) shall survive expiration or termination of this BAA.

**6.8 Entire Agreement.** This BAA, together with the Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof.