

## INDIRECT CHANNEL PARTNER GENERAL TERMS AND CONDITIONS

These Indirect Channel Partner – General Terms and Conditions (“**Terms**”) apply to all Indirect Resellers (“**you**” and “**your**”) who are enrolled in the “Trellix” and/or “Skyhigh Security”-branded channel partner program (“**Program**”). These Terms are incorporated into your Indirect Channel Partner Enrollment Agreement (“**Agreement**”) that you accepted as part of your enrollment in a Program. Trellix, Skyhigh, and the Indirect Reseller may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.” Capitalized words in these Terms are defined in attached Exhibit 1 (“**Definitions**”) to these Terms.

### **1. NON-EXCLUSIVE PARTICIPATION IN THE PROGRAM**

- 1.1. During your enrollment in the Program, and subject to compliance with the Agreement and Partner Program Requirements, you are authorized to act as a *non-exclusive* reseller of the Products to End Users in a designated Territory. To resell to the U.S. Government, you must first obtain an authorization letter from Trellix Public Sector LLC. You will not market, promote, solicit sales, or resell the Products or managed services *outside* of your designated Territory.
- 1.2. We may: (a) contract with other resellers to resell Our Products; (b) advertise, promote, market, and make direct sales of Our Products to End Users and other customers; and (c) provide services that may compete with your offerings.
- 1.3. Your Affiliates are not automatically included in a Program. Each Affiliate must separately enroll in a Program and accept the Agreement.
- 1.4. We may modify a Program at any time, and in such cases, We will post Program changes on Our Partner Portal. You are responsible for regularly checking the Partner Portal for Program changes. If you do not agree to Program Requirements, you must stop accepting End User orders immediately, and you may end your enrollment in the Program at any time by providing Us with thirty (30) Day’s prior written notice. Your continuing participation in the Program shall be your agreement to Program changes. We may terminate your Program participation or modify your Partner status level as set forth in the Program Guide if you fail to achieve or maintain the Program Requirements.
- 1.5. You agree to provide timely and accurate point of sale information (“**POS**”) to your Authorized Distributor, as well as to Us, upon Our request. You acknowledge that your provisioning of accurate and timely POS information is a material Program Requirement and of these Terms, and is needed for processing orders, validating End User entitlements to the Products, calculating applicable Program incentives that you may have earned, and for other business purposes.
- 1.6. As part of your ongoing participation in the Program, you will have access to the Partner Portal, which includes content in the form of information, materials, and tools (the “**Content**”) pertaining to the Program and the Products. We grant you a limited, non-exclusive, nontransferable, non-sublicensable right and license, during the Term, to access and use the Partner Portal and Content therein, solely in accordance with these Terms. All Content remains Our property. You may only use the Partner Portal for purposes of fulfilling your Program responsibilities. We may suspend or terminate immediately your access to the Partner Portal if We reasonably believe you violated or will violate these Terms, or as needed to ensure the security or integrity of the Partner Portal.

You agree to provide, and to keep updated, all contact information of your authorized Representatives in the Partner Portal (“**Contact Information**”). You grant Us permission to use your Contact Information for the purposes of conducting the Program, in accordance with applicable laws. We may remove you from Our database and Partner Portal if you fail to provide Us with current Contact Information. We retain the right to remove access to the Partner Portal to anyone whose identity with your organization cannot be promptly validated, or when such removal is required per applicable export or other laws. You are responsible for deactivating the user profile

and Partner Portal access for any of your Representatives who depart from or are disassociated with your organization. You will be solely responsible for any of your Representatives gaining unauthorized access to Our systems, or to any of your data, or data of other companies stored within Our systems.

## **2. PRODUCTS AND SERVICES**

- 2.1 You must purchase Products from an Authorized Distributor of your choice for your resale to End Users in the Territory. You will not purchase Products from any unauthorized source, or purchase or resell non-genuine Products, within or outside of, the Territory.
- 2.2 Your purchase of the Products from an Authorized Distributor will be on terms and conditions as agreed to between you and the Authorized Distributor, and will not be subject to Our review or approval. You are free to set your resale prices in your sole discretion and nothing in these Terms or the Program should be construed to restrict such right.
- 2.3 You agree to promptly submit purchase orders to your Authorized Distributor after receipt of a purchase order from the End User. No rights are granted to stock Products, and you shall not stock Products.
- 2.4 You will not remove or obscure any Product labels or Product markings. If you handle any Products or prepare Products for shipment to End Users, you will comply with all applicable laws related to Product labeling.
- 2.5 Unless We expressly pre-approve in writing, or as may be required per applicable law, you will not authorize, appoint, or use any agents, subcontractors or other third parties as downstream resellers or intermediate entities to market or sell the Products.
- 2.6 We reserve the right in Our sole discretion, and without liability to you, to make changes to the Products at any time, including, without limitation, adding new Products, changing the prices for the Products, modifying the Products, changing the level of Support, and discontinuing the availability of any Product, in accordance with Our [End-of-Life Policy](#). We retain the right to modify or discontinue the resale of any of the Products at any time in Our sole discretion. Products changes will be reflected in Our Price Book(s) that We make available to you.
- 2.7 The rights in this Agreement are licenses or rights of access subject to Product resale, and do not constitute a sale or transfer of ownership of any portion of a Product. We reserve all rights in the Products that are not expressly authorized for your resale. You shall resell licenses or access rights for the Products of the same character as the licenses or access rights you have purchased from an Authorized Distributor. *Example:* If you purchase a three-year term license for a Product, you must resell that Product license as a single three-year term license; similarly, any perpetual license for a Product must be resold as perpetual license.
- 2.8 We may make certain NFR Products available to allow you to: (a) use the NFR Products within your network environment; (b) become more familiar with the NFR Products to enable effective Product promotion; and (c) demonstrate the NFR Products to prospective End User customers. NFR Products are not permitted for resale or license to End Users. Upon Our request, you will promptly provide relevant information about your use of NFR Products, and you acknowledge that your misuse of NFR Products may result in you suspension or termination from a Program.
- 2.9 **Services.**
  - (a) **Technical Support and Maintenance Services** are governed by Our [Technical Support and Maintenance Terms and Conditions](#) that you will pass thru (unchanged) to the End User. You must purchase from an Authorized Distributor and resell Support for all Products resold to End Users unless Support is already included in the fees for the Products. If an End User fails to maintain Support continuously and wants Support to be

reinstated, the End User must purchase Support to cover the period from the expiration of the previous Support Period until the Support is current. We may also charge an out of compliance fee in connection with bringing an End User's Support current.

(b) **Professional Services** are governed by Our [Professional Services Terms and Conditions](#) that you will pass through (unchanged) to the End User.

### 3. GRANT LETTERS / END USER AGREEMENTS

After We accept a valid purchase order from an Authorized Distributor, We will issue a Grant Letter to the identified End User. Each Grant Letter includes an active Grant Number and written instructions for the End User with respect to the End User's access to, and use of, the Products. As part of this activation process, the End User must click-accept the applicable End User Agreement(s) unless otherwise agreed between Us and the End User. You shall not modify or alter the End User Agreement(s) or restrict the End User from accepting such End User Agreement(s) as part of Our activation process. You acknowledge that the End User's use of a Product is subject to an applicable End User Agreement, and you agree to undertake commercially reasonable efforts to bring the applicable End User Agreement to the attention of the End User during the ordering process, such as by providing to the End User an unmodified copy, or link to, the applicable End User Agreement.

### 4. MARKETING AND TRADEMARK LICENSE

- 4.1 Subject to these Terms, you agree to market, advertise, promote, and resell the Products to End Users within your Territory. Your participation in the Program shall constitute an opt-in to receive marketing communications, and you shall obtain any required consent from your Representatives.
- 4.2 You will avoid deceptive, misleading, or unethical practices, and conduct your business in a professional and businesslike manner that reflects favorably upon the Products and Us.
- 4.3 In connection with your marketing activities, We grant to you a non-exclusive, non-transferable, limited license (without the right to sublicense), for the Term, to use and display Our Trademarks ("Our Marks") solely in connection with your marketing and resale of the Products in accordance with these Terms and Our Trademark Policy & Guidelines.
- 4.4 You may advertise and promote the Products in a commercially reasonable manner so long as you: (a) do **not** market a combined offering under any name similar to Our Marks without Our written approval; (b) retain and reproduce, as applicable, Our Marks and any of Our copyright notices on all Products, as provided by Us, without alteration and without attaching any additional Trademarks or Logos; and (c) do not register or attempt to register any Trademark or domain name containing Our Marks.
- 4.5 We grant to you a non-exclusive, non-transferable limited license (without the right to sublicense), for the Term, to use, reproduce and distribute the Documentation in accordance with these Terms and Our Trademark Policy & Guidelines, solely in connection with your activities to market, promote and sell the Products in accordance with these Terms. You cannot modify the Documentation in any way.
- 4.6 You grant to Us and Our Affiliates a non-exclusive, non-transferable limited license (without the right to sublicense), for the Term, to use and display the marks you own ("Your Marks"), in accordance with your reasonable written instructions or usage guidelines that you provided to Us, in furtherance of each Party fulfilling its obligations under these Terms.
- 4.7 We will have the right to review and approve your use of Our Marks and Documentation. Upon Our request, you will promptly provide Us with any documentation you plan to use for advertising, marketing or promotional materials that includes Our Marks. Our approval shall not be

unreasonably withheld or delayed. We may require you to provide the date and source of the publications in which Our Marks may appear (or have appeared).

- 4.8 Each Party acknowledges and agrees that:
  - (a) We are the sole and exclusive owner of Our Marks;
  - (b) you are the sole and exclusive owner of Your Marks;
  - (c) each Party owns all goodwill associated with its Trademarks; you assign to Us all goodwill associated with or created by your use of Our Marks;
  - (d) a Party's use of the other Party's Trademarks will not create any right, title, or interest in the other Party's Trademarks;
  - (e) it will do nothing inconsistent with the other Party's Trademarks ownership, either during the Term or afterwards; and
  - (f) Each Party will have the sole right and discretion to bring, prosecute and settle infringement, unfair competition and similar proceedings based on its own Trademarks.
- 4.9 At Our request, you will immediately cease and desist in the use of any domains or sub-domains containing all or part of Our Trademarks (i.e., to the left of the “dot” for top level domains). On Our further request, you will immediately assign all your rights and ownership in the domains to Us.
- 4.10 Nothing in Section 4 prevents either Party from making general statements to confirm the existence of the business relationship between the Parties created under the Agreement. Any official public relations and formal press releases concerning the Agreement and the relationship between the Parties, or any business activities undertaken by the Parties pursuant to the Agreement shall be mutually agreed upon by the Parties in advance of any public announcement.

## 5. CONFIDENTIALITY

- 5.1 Confidential Information as used herein, means any information (regardless of the form of disclosure or the medium used to store or represent it) of a Party or its Affiliates (“**Disclosing Party**”), including trade secrets and technical, financial, or business information, data, ideas, concepts or know-how, that: (a) is designated as “confidential” or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) Days of disclosure; or (b) the receiving party or its Affiliates (“**Recipient**”) should reasonably have considered to be confidential under the circumstances surrounding disclosure.
- 5.2 Confidential Information does not include any information that: (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party; (b) is received from a third-party rightfully in possession of such information without restrictions on its use or disclosure and not by inadvertence or mistake; (c) is or has become disseminated to the public through no fault of the Recipient and without violation of these Terms or other obligation to maintain confidentiality; or (d) is created independently by the Recipient without breach of these Terms, including any obligation of confidentiality owed to the Disclosing Party.
- 5.3 Each Party acknowledges that it may have access to Confidential Information of the other Party, and that each Party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third Parties or used in violation of these Terms. Each Recipient of Confidential Information must:
  - (a) protect the Disclosing Party's Confidential Information from unauthorized disclosure and protect it at least to the same extent it protects its own Confidential Information, and to the same extent that a reasonable person would protect such Confidential Information;

- (b) not use or disclose the Disclosing Party's Confidential Information in any way for its own account or the account of any third-party except to perform its duties or exercise its rights under these Terms or as otherwise authorized under these Terms provided that:
  - (i) any disclosure made to the Recipient's Affiliates, employees, contractors or agents is on a need-to-know basis; and
  - (ii) the Recipient's Affiliates, employees, contractors, or agents in receipt of the Confidential Information are under a written obligation of confidentiality no less stringent than that specified in this section.

5.4 Notwithstanding the restrictions in set out above, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure; and
- (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

5.5 You will immediately notify Us if any of Our Confidential Information is used or disclosed in breach of these Terms. As monetary damages may not be sufficient relief if anyone violates or threatens to violate the terms of this section, We are immediately entitled to enforce Our rights by specific performance or injunction proceedings, in addition to any other rights or remedies We may have.

5.6 Upon the Disclosing Party's request and upon termination (unless agreed otherwise by the Parties at the time), each Party will return, destroy, or delete permanently (at the Disclosing Party's election) the other Party's Confidential Information. Upon termination, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for **five (5) years** in accordance with this section.

5.7 If either Party provides the other with any sales leads or proprietary information pertaining to a particular prospective End User customer ("End User Information"), the Recipient must keep the End User Information confidential and not disclose the End User Information to any third-party without the Disclosing Party's consent. However, any information related to the following entities will not be considered End User Information: any current End Users of any Products, or any person or entity then being solicited by Us or any of Our distributors, dealers, agents, or other Representatives. Notwithstanding the above, sharing of End User Information will not restrict Our ability to pursue any arrangements with a prospective End User customer.

5.8 We will not be required to treat as Confidential Information any suggestion or idea you provide to Us regarding the Products ("Feedback"), and nothing in the Parties' dealings arising out of or related to these Terms will restrict Our right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensation to you or any third-party or provide you or any third-party with any rights to the Products.

## 6. BUSINESS RECORDS AND REVIEW

6.1 During the Term of the Agreement, and for a minimum of **three (3) years** thereafter (or for a longer period, if required by applicable law), you must maintain complete, legible, and accurate Records relating to your activities in the Program and compliance with the Agreement.

6.2 Upon Our request, you will cooperate with Us and Our authorized Representatives to review (or provide copies of), your relevant Records to validate your compliance with these Terms and the

Program (the “**Review**”). A Review will: (1) occur no more than once per year (unless We have a legitimate concern regarding your compliance with these Terms); (2) be conducted during your regular business hours and as not to unduly interfere with your regular business activities.

- 6.3 If a Review identifies discrepancies of any nature, We will send you a written deficiency notice. You must cure the identified deficiencies (assuming they can be cured) within thirty (30) Days of such notice unless We agree in writing to a longer period.
- 6.4 If the Review indicates that you have not paid for Products, or have underpaid for certain Products, you shall promptly pay for all outstanding amounts due.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 The Products are strictly confidential to Us. You acknowledge and agree that the Products and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into it, all future updates and upgrades, and all other improvements, revisions, corrections, bug-fixes, hotfixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy and database updates and other updates in, of, or to the Products, all Derivative Works based upon any of the foregoing, and all copies of the foregoing are Our trade secrets and proprietary property, having great commercial value to Us.
- 7.2 We (including Our Affiliates or Our licensors) own exclusively and reserve all Intellectual Property Rights in Our Products, and you may not exercise any right, title, and interest in and to the Products, including, without limitation, all Intellectual Property Rights in and to the Products, except to the extent of the limited use license or right to use granted to you in these Terms.
- 7.3 **Restrictions.** You may not, and may not cause or allow any End User or third-party to:
  - (a) decompile, disassemble, or reverse-engineer the Products, or create or recreate the Source Code for the Products;
  - (b) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Products or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Products and Documentation;
  - (c) lease, lend or use the Products for timesharing or service bureau purposes; sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the Products except to the extent expressly permitted in these Terms;
  - (d) use the Products to provide, alone or in combination with any other Product or service, any Product or service to any person or entity, whether on a fee basis or otherwise except to the extent expressly permitted in these Terms;
  - (e) modify, adapt, tamper with, translate, or create Derivative Works of the Products or the Documentation; combine or merge any part of the Products or Documentation with or into any other software or documentation; or refer to or otherwise use the Products as part of any effort to develop Software or Cloud Services (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Products or to compete with Us;
  - (f) except with Our prior written permission, publish any performance or benchmark tests or analysis relating to the Products; or
  - (g) attempt to do any of the actions in subsections 7.3 (a) through (f).
- 7.4 You may not combine, resell, or distribute the Products with Open-Source Software or with software developed using Open-Source Software (e.g., tools) in a manner that subjects the Products, or any portion of the Products, to any license obligations of the Open-Source Software.

7.5 You will not remove, alter, or obscure any copyright or other proprietary rights notices contained in the Products, and you will not apply any Trademarks or notices to the Products, other than Our Trademarks in accordance with the Trademark terms set forth in Section 4.

## 8. TERM AND TERMINATION

8.1 **Term.** The Agreement will commence as of the date when you have click-accepted or otherwise electronically accepted the Agreement (the “**Effective Date**”) and will remain in effect for twelve months, unless terminated earlier as set forth below. The Agreement will automatically renew for successive one (1) year terms unless either party gives the other thirty (30) days’ written notice of its intent not to renew. A Party’s performance of its surviving obligations after termination will not extend the Agreement.

8.2 **Termination Without Cause.** Either Party may terminate the Agreement at any time without cause with thirty (30) Days prior written notice to the other Party. Neither party will have to pay the other party any costs or damages resulting from termination of this Agreement without cause.

8.3 **Termination for Cause.** A Party may terminate the Agreement for cause if the other Party breaches any term of the Agreement. The terminating Party will give the breaching Party not less than thirty (30) days’ written notice and opportunity to cure the breach if the cause for termination is curable. If the cause for termination is a material breach or is not a curable breach, termination is effective immediately upon written notice from the terminating party. Disclosure of Confidential Information, including, for example, the disclosure of Program Requirements, discounts, incentives, the misappropriation of Our intellectual property and insolvency, bankruptcy or other similar proceedings, are grounds for immediate termination.

8.4 **Effect of Expiration or Termination.** Upon expiration or termination of the Agreement, you must:

- (a) immediately stop using all rights granted by these Terms, including, but not limited to, your use of the Products and Documentation in your possession or control and use of Our Confidential Information;
- (b) either return to Us, or destroy or permanently delete Our Confidential Information and certify in writing to Us that you have taken such actions;
- (c) immediately cease all use of, and remove from your website, all links to Our website and Our name and Marks; and
- (d) cease identifying or representing yourself as a Channel Partner under the applicable Program.

8.5 If the Agreement is terminated, We reserve the right to communicate with End Users and to provide them with the option to purchase Products from other Authorized Resellers or from Us directly, in order to maintain continuity of service for such End Users.

8.6 **Survival.** The following Sections shall survive the expiration or termination of these Terms, together with any other term that is by its nature intended to survive termination of these Terms: Section 5 (Confidentiality), 6 (Business Records and Review), 7 (Intellectual Property Rights), 8 (Term and Termination), 9 (Privacy), 10 (Indemnification), 11 (Warranty), 12 (Limitation of Liability and Waiver of Consequential Damages), 14 (Export Compliance), 16 (General), and Exhibit 1 (Definitions).

## 9. PRIVACY

9.1 Each Party shall comply with all applicable laws governing the collection, use and disclosure of Personal Data and must obtain any required consents with respect to the handling of Personal Data. Our management of Personal Data is described in [Our Privacy Policy](#).

9.2 Unless a specific agreement has been executed between the Parties, by entering into the Agreement, the Parties are deemed to have executed Our [Customer Data Processing Agreement](#) (the “**DPA**”) (including, where applicable, the Data Transfer Addendum) which is incorporated herein by reference. In the event of any conflict between the terms of the DPA and the Agreement, the terms of the DPA will take precedence.

9.3 You grant Us a non-exclusive, irrevocable, worldwide, perpetual right and license to use, reproduce and disclose Threat Data and deidentified material for improvement of Products and services; research to enhance understanding of Malware, threats, and vulnerabilities; and to improve overall security. This includes, without limitation, compiling statistical and performance information and making such information publicly available. We retain all rights in Threat Data and aggregated and anonymous data.

## **10. INDEMNIFICATION**

10.1 You agree to defend, indemnify, and hold Us and Our Affiliates harmless against any claims, liabilities, damages, and expenses (including court costs and reasonable attorney fees) that We or Our Affiliate incurs because of or in connection with any third-party claims arising from:

- (a) any representation, condition, warranty, or other term provided or offered by you with respect to the Products, other than those specified in Our End User Agreements;
- (b) your managed services offerings or other services or offerings, performance, action or inaction, or marketing materials; and statements or representations regarding your managed service offerings or regarding the Products, other than what is specified in the applicable Documentation provided by Us to you under these Terms;
- (c) any modification of Products, or use, operation, or combination of the Products with non-Trellix or non-Skyhigh Security products, services, or data;
- (d) any claims, costs, damages, and liabilities whatsoever asserted by any of your Representative(s); or
- (e) breach of Intellectual Property Rights or Confidential Information.

10.2 We will notify you promptly in writing of any claim for which We seek indemnification. Unless We instruct otherwise, you will conduct the defense of any claim and any related settlement negotiations, and you must not make any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by U9s, or which is otherwise detrimental to Our interests, without Our written consent.

## **11. WARRANTY**

**We warrant the Products to End Users, as described in the End User Agreement(s).**

**DISCLAIMER: UNLESS REQUIRED BY APPLICABLE LAWS, WE GIVE NO OTHER EXPRESS WARRANTIES, REPRESENTATIONS, OR CONDITIONS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WE EXCLUDE ALL IMPLIED WARRANTIES AND CONDITIONS, SUCH AS IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.**

## **12. LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES**

12.1 SUBJECT TO SECTIONS 12.3 AND 12.4 BELOW, EACH PARTY’S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES ARISING FROM CLAIMS UNDER OR RELATED TO THE AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF PAYMENTS MADE BY YOU TO AN AUTHORIZED DISTRIBUTOR FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE EVENT OR

CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE.

- 12.2 SUBJECT TO SECTION 12.3 AND 12.4, NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, LOST PROFITS, LOST BUSINESS, LOSS OF GOODWILL, LOST REVENUE OR LOST SAVINGS, LOSS OF USE OR LOSS, STOLEN OR DAMAGED DATA OR INTERRUPTION OF BUSINESS, LOSS OF PERSONNEL SALARIES, COMPUTER OR SYSTEM FAILURE OR MALFUNCTION, COSTS OF OBTAINING SUBSTITUTE PRODUCTS, WORK STOPPAGE, DENIAL OF ACCESS OR DOWNTIME, SYSTEM OR SERVICE DISRUPTION OR INTERRUPTION, AS WELL AS THE COSTS OF RESTORING ANY LOST, DAMAGED, OR STOLEN DATA, INFORMATION OR SYSTEMS, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.
- 12.3 THESE LIMITATIONS OF LIABILITY APPLY WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, STATUTE OR OTHERWISE.
- 12.4 THE LIMITATIONS IN THIS SECTION 12 DO NOT APPLY TO CLAIMS FOR FRAUD, BREACH OF CONFIDENTIALITY, INDEMNITY (SEE SECTION 10), YOUR VIOLATION OF OUR INTELLECTUAL PROPERTY RIGHTS OR ANY LIABILITY THAT CANNOT BE OTHERWISE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

### **13. COMPLIANCE WITH ANTI-CORRUPTION/ ANTI-BRIBERY LAWS**

- 13.1 You will comply with all applicable laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, including, but not limited to, the U.S. Foreign Corrupt Practices Act (“FCPA”) and the U.K. Bribery Act (“Anti-Corruption Laws”). It is the intent of the Parties that no payments or transfers of anything of value shall be made which have the purpose or effect of public, commercial or other bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage.
- 13.2 You represent and warrant that:
  - (a) neither you, nor anyone acting on your behalf, has violated or will violate the Anti-Corruption Laws in connection with your participation in a Program; and
  - (b) You have not and will not, directly, or indirectly, offer, promise, authorize, solicit, pay, or give *anything of value* to any Government Official to:
    - (i) influence an act or decision of the Government Official in their official capacity;
    - (ii) induce the Government Official to do or omit to do any act in violation of the lawful duty of such official;
    - (iii) secure an improper advantage; or
    - (iv) induce the Government Official to use their influence to affect or influence any act or decision of a government or instrumentality, in each case to assist Us or any of Our Affiliates in obtaining or retaining business.
- 13.3 You acknowledge that you are prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for Government Officials on Our behalf. You also acknowledge that you are prohibited from using any funds provided by Us or any proceeds resulting from any resale of Our Products, to pay expenses for travel, lodging, gifts, hospitality or charitable contributions for Government Officials on Our behalf.

- 13.4 You shall maintain a system of internal controls to prevent the payment of bribes and provide reasonable assurance that finance statements and reporting are accurate. You shall not have undisclosed or unrecorded accounts for any purpose. False, misleading, incomplete, inaccurate or artificial entries in the books and records are prohibited.
- 13.5 **No Affiliation with Government Officials-Disclosure Obligation.** To the extent that any of your directors, employees, direct or indirect owners, representatives, consultants or agents *who is or will be involved in your sales or referral activities on Our behalf*, is a Government Official, you shall disclose such fact in writing to Our Legal Department ([Legal@Trellix.com](mailto:Legal@Trellix.com)). In the event that there is a change in the information described in this Section 13.5, you agree to make immediate disclosure to Our legal department. You shall cooperate reasonably with any requests We may need to make, for additional relevant information to understand such changes. If, in Our opinion, such changes create a heightened risk of non-compliance with the Anti-Corruption Laws, such changes may constitute a basis for Our termination of this Agreement.
- 13.6 If We have a good faith, reasonable basis to believe that you have breached, or may breach, any of the obligations set forth in this Section 13, We may, without limitation to other rights and remedies: (a) withhold further delivery of Products and other performance under the Program until such time as We receive confirmation to Our satisfaction that no breach has occurred, or (b) terminate your Agreement and participation in the Program.
- 13.7 You will maintain your own anti-corruption policies and training, and have adequate procedures and monitoring designed to ensure that you and any third party you engage in connection with this Agreement comply with Anti-Corruption Laws. Upon Our request, you agree to provide Us with a written certification of compliance with the terms of this Section 13 in a form acceptable to Us. Your record-keeping obligations, set forth in Section 6 above, apply to your certifications in this section and your compliance with Anti-Corruption Laws.

## **14. EXPORT COMPLIANCE**

- 14.1 You will not, directly, or indirectly, export, transmit, or distribute to, or use the Products or any portion thereof (including any technical data), in any country to which export or transmission is restricted by regulation, statute, or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other applicable governmental entity that may have jurisdiction over export or transmission.
- 14.2 You will not use or transfer the Products, or any portion thereof, for end use relating to any activity prohibited by the United States or other applicable government law or regulation (including, but not limited to, activities related to nuclear proliferation, biological or chemical weapons, or missile or rocket technology), unless authorized by the U.S. Government by regulation or specific license.
- 14.3 You acknowledge and agree that Software containing encryption may be provided in conjunction with the Products and may require authorization from the U.S. and other applicable authorities including the European Union, prior to export. You also acknowledge and agree that any Products containing encryption may be subject to import or use restrictions in other countries. Additional information may be found on Our “Export Compliance” webpage <https://www.trellix.com/en-us/about/export-compliance.html>, as updated from time to time.
- 14.4 If We receive notice that you are, or become identified as, a sanctioned or restricted party under applicable law, We will not be obligated to perform any obligations under these Terms and may cease immediately and without prior notice and without liability to you, if We determine such performance may result in violation of the sanctions or restrictions.

## **15. REPRESENTATIONS**

15.1 In addition to any other express representation or warranty specified in these Terms, each Party represents and warrants to the other that:

- (a) these Terms constitutes a legal, valid, and binding obligation of the Party, enforceable in accordance with its terms by appropriate legal remedy; and
- (b) it has the legal and corporate power to enter these Terms.

15.2 Additionally, you represent that:

- (a) You are registered and in good standing with the applicable tax authority(ies), and hold any required business licenses;
- (b) You are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from conducting business by and with any government entity;
- (c) You have not been criminally convicted of, or had a civil judgment rendered against you in the past five (5) years, *by a government entity*, for the commission of fraud, theft, forgery, bribery, falsification, or destruction of Records, making false statements, misappropriation of Intellectual Property Rights, or for other unfair business practices (including, but not limited to, violation of antitrust/competition laws); and
- (d) You are not presently indicted for, or otherwise criminally or civilly charged *by a government entity*, with any of the actions noted in (c) above.

## **16. GENERAL**

16.1 The Parties are independent contractors for all purposes under the Agreement; there is no agency, franchise, or fiduciary relationship between the Parties. The use of the term “Partner” by either Party in connection with the Program is purely for marketing purposes; it neither establishes any partnership between the Parties, nor indicates the intent of either Party toward a partnership or joint venture.

16.2 You may not sublicense, assign, or transfer the Agreement or your rights or delegate your obligations under the Agreement by operation of law or otherwise without Our prior written consent. Our rights and obligations, in whole or in part, under these Terms, may be assigned or delegated by Us to any of Our Affiliates or in connection with a merger, reorganization, consolidation or sale of all or a portion of Our business, without prior written notice to you.

16.3 If a court holds that any provision of the Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from the Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of the Agreement, which will continue in full force and effect.

16.4 A Party’s failure or delay in enforcing any provision of the Agreement will not operate as a waiver of the right to enforce that provision or any other provision of the Agreement at any time. A waiver of any provision of the Agreement must be in writing, specify the provision to be waived and signed by the Party agreeing to the waiver.

16.5 Neither Party is liable for delays or failures to perform any of its obligations under the Agreement to the extent caused by a Force Majeure Event.

16.6 To the extent not addressed elsewhere in these Terms, each Party shall comply with its respective national, state, and local laws and regulations governing the performance of each Party’s obligations under the Agreement during the Term.

16.7 We do not solicit or accept complaints from Our Channel Partners about other Partner's sales or pricing practices and will not engage in any such discussions. **All Channel Partners are free to unilaterally determine their resale prices.**

16.8 **Notices.** Your principal place of business determines the contracting entity, the address to which you should direct legal notices to Us, the law that will apply in any dispute arising out of or relating to these Terms, or its subject matter, and which courts can decide any such dispute, as set for in the table below. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to these Terms.

Partner's Principal Place of Business	Contracting Trellix or Skyhigh Security Entity	Governing Law	Jurisdiction	Address for Legal Notices
Canada, United States and Central and South America (excluding U.S. Public Sector sales)	<b>Musarubra US LLC</b>	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California	6000 Headquarters Drive, Suite 600, Plano, TX 75024, USA
For all sales to the U.S. Government*	<b>Trellix Public Sector LLC</b>	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California	11911 Freedom Drive, Suite 400, Reston, VA 20190, USA
* Regardless of where Partner is <b>domiciled</b> , and for Partners domiciled in the United States, with respect to the resale to state and local governments in the United States and to healthcare End User customers in the United States.				
Australia	<b>Musarubra Australia Pty Ltd.</b>	Laws of Australia	Courts of New South Wales, Australia	40 Mount Street, Level 16, North Sydney, NSW 2060, Australia
Europe, Middle East, and Africa	<b>Musarubra Ireland Limited</b>	Laws of the Republic of Ireland	Courts of the Republic of Ireland	70 Sir John Rogerson's Quay, Dublin 2, DUBLIN, D02 R296, Ireland, Eircode D02 R296
Japan	<b>Musarubra Japan KK</b>	Laws of Japan	Tokyo District Court of Japan	Shibuya mark City West, 1-12-1 Dogenzake, Shibuya-ku, Tokyo 150-0043
Asia Pacific, but excluding China, Japan, and Australia	<b>Musarubra Singapore Pte Ltd.</b>	Laws of the Republic of Singapore	Courts of the Republic of Singapore	238A Thomson Road, #12-01.05 Novena Square, Tower A, Singapore, 307684
China	<b>McAfee (Beijing) Security Software Co. Ltd.</b>	Laws of the Republic of Singapore	Courts of the Republic of Singapore	Room 608, Unit 0610, 6/F Zhongyu Masion, No.6 North

Partner's Principal Place of Business	Contracting Trellix or Skyhigh Security Entity	Governing Law	Jurisdiction	Address for Legal Notices
				Workers' Stadium Road, Chaoyang District, Beijing, China

16.9 We will provide notice of Program changes on the Partner Portal. Any other notices shall be provided by a Party to the other in writing and will be considered delivered when received if delivered by hand with receipt, the next Business Day after sending it by pre-paid, nationally recognized, overnight air courier with tracking capabilities, or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, as follows:

**For notice to Trellix or Skyhigh Security:** See Table 1 above. Copies of all notices should also be sent to the Attention of the Trellix Legal Department, 6000 Headquarters Drive, Suite 600, Plano, Texas 75024.

**For notice to Channel Partner:** your then-current name and address that you have provided to Us in the Partner Portal.

A Party may change its address for notification purposes by giving written notice of such change to the other Party. Notwithstanding the foregoing, communications in the ordinary course of business (which do not include any notices related to payment, any dispute under or alleged breach of these Terms, any effort to enforce the terms of these Terms, or any notice regarding termination of these Terms or the Products), may be sent via email to the appropriate contact.

We reserve the right to amend any terms of this Agreement at any time. Any amendment will be effective on the posting of an updated version at <https://www.trellix.com/en-us/about/legal.html>.

- 16.10 Nothing in these Terms, either expressed or implied, is intended or shall be construed to confer upon any entity (including any End User), other than the Parties, any remedy or claim by reason of these Terms, and any such remedies or claims shall be for the exclusive benefit of the Parties, as applicable.
- 16.11 The Parties will attempt to resolve all disputes, claims, or controversies arising under or related to this Agreement or its subject matter or any right or obligation created by this Agreement (“Dispute”) through good faith negotiations conducted by authorized representatives of each Party. The party asserting the Dispute will give prompt notice to the other Party describing the issues in reasonably sufficient detail for escalation discussions.
- 16.12 In addition to all remedies available at law, a Party will be entitled to seek injunctive relief or other equitable remedies in the event of any threatened or actual violation of any or all of the provisions hereof.
- 16.13 You may report any concerns you may have regarding business practices through Our ethics hotline posted at the Legal Notices site: <https://www.trellix.com/en-us/about/reporting-violations.html>.

*-Exhibit 1 (“Definitions”) follows this page-*

## Exhibit 1- Definitions

The capitalized terms below, as used in the Terms, shall have the following meaning(s):

**Affiliate, with respect to Channel Partner**, means any legal entity that owns, is owned by or that is under common ownership with you. Ownership means control of more than fifty percent (50%) interest.

**Affiliate, with respect to Trellix**, means any legal entity identified in Table 1 of Section 16 above, as well as any legal entity that owns, is owned by, or that is under common ownership with any of the legal entities in Table 1, Section 16 above, as amended and updated as necessary.

**Authorized Distributor** means a business entity appointed and authorized by Us as a distributor to distribute the Products to Channel Partner.

**Business Day** means any Day other than a Saturday, Sunday, statutory or public holiday in the Territory.

**Channel Partner** is a business entity enrolled in the Trellix and/or Skyhigh Security Partner Program(s) and authorized to resell Products to End Users.

**Cloud Services** means the cloud services described at <https://trellix.com/en-us/about/legal/cloud-terms-of-service.html>.

**Days** means calendar days, unless expressly stated otherwise.

**Derivative Work** means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed, or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

**Documentation** means any explanatory materials, such as User manuals, training materials, product descriptions, data sheets, regarding the implementation and use of the Products that We provide or made available. Documentation may be provided in printed, electronic, or online form.

**End-of-Life or EOL Policy** means the policy available at <https://trellix.com/en-us/assets/docs/legal/support-policy-product-support-eol.pdf>.

**End User or End User Customer** means a third-party business entity who purchases the Products or managed service from you to use for such entity or company's own internal business purposes, and not for resale, further distribution, or for providing outsourcing or other services. For avoidance of doubt, "End User" does not mean non-business consumers. With respect to Hardware, End User also means the initial purchaser of the Hardware.

**End User Agreement(s)** means any or all of the End User License Agreement, the Cloud Terms of Service Agreements, Technical Support and Maintenance Terms and Conditions for Enterprise Customers, Professional Services Terms, Data Processing Agreement for Customers (including the Standard Contractual Clauses), and other terms as may be updated and posted at the Legal Notices site <https://www.trellix.com/en-us/about/legal.html>.

**End User License Agreement or EULA** means the End User License Agreement posted at <https://www.trellix.com/en-us/assets/docs/legal/Musarubra-EULA.pdf>. Depending on the Software, the EULA may be in executable, "shrink-wrap" or "click-through" form.

**Force Majeure Event** means any event beyond a Party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including epidemics, pandemics, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by Our vendors, fire, flood, earthquake, accident, radiation, inability to secure

transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.

**Government Official** means any officer, employee or person acting in an official capacity for any government department, agency, or instrumentality, including state-owned or -controlled companies, and public international organizations, as well as a political party or political party official or candidate for political office.

**Grant Letter** means any written (electronic or otherwise) confirmation notice that We issue to End Users, with copies to the Channel Partner and Authorized Distributor, confirming the Products purchased and applicable Product Entitlement. The Grant Letter identifies the SKU number, quantity, Subscription Period or Support Period, and other access and use details.

**Grant Number** means a unique number specified in a Grant Letter, which is required to access or download the Product(s) specified in the Grant Letter.

**Hardware or Hardware Products** means the Trellix or Skyhigh Security tools, machinery, or other durable equipment together with all parts, components and peripherals, and any combination of them, including Firmware. “Firmware” as used here means software programs or microcode necessary to use Hardware but does not include any Software that is otherwise available as a Product separately from Hardware (even if such Software is sometimes combined with Hardware).

**Indirect Reseller** means a Channel Partner who buys Products from an Authorized Distributor for purpose of resale to an End User.

**Intellectual Property Rights** means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including: (a) copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights; (b) any application or right to apply for any of the rights referred to in paragraph (a); and (c) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in (a) and (b) above.

**NFR Products** means Products that are not for resale, as such term is used in Section 2.8.

**Partner Portal** means the domain that your authorized personnel may access online to obtain information about the Program: [Please click here](#). Your use of the Partner Portal is subject to Our Terms of Service at <https://www.trellix.com/en-us/about/legal/website-terms-of-service.html>.

**Personal Data** means any information relating to an identified or identifiable individual or is otherwise defined as ‘Personal Data’ under the General Data Protection Regulation or other applicable data protection laws. to the extent that the definition of ‘Personal Data’ under the applicable data protection laws is broader than the preceding definitions.

**Price Book(s)** means the then-current Product price lists that We make commercially available to Our Channel Partners on the Partner Portal.

**Privacy Notice** means Our written privacy notice at <https://www.trellix.com/en-us/about/legal/privacy.html>.

**Products** means collectively Trellix and Skyhigh Security-branded Software, Hardware, Cloud Services, Technical Support, Professional Services, and other commercial offerings in the Price Book(s).

**Product Entitlement** means the license or subscription types for the Products, as set forth in the Grant Letter and defined at <https://www.trellix.com/en-us/assets/docs/legal/trellix-product-entitlement-definitions.pdf>.

**Professional Services** means the specific tasks, functions, responsibilities, and other services specified in a statement of work or other ordering documentation, that We provide to an End User in accordance with a mutually agreed statement of work document.

**Professional Service Terms** mean the terms and conditions for professional services at <https://www.trellix.com/en-us/about/legal/professional-service-terms.html>.

**Program Guide** means Trellix or Skyhigh Security written guidelines, as amended from time to time, specifying the Program Requirements, and which guidelines are maintained on the Partner Portal.

**Program Requirements** means the training, certification, and other requirements that you are required to achieve and maintain as part of your participation in the Program, as specified in the Program Guide.

**Records** means all records created, received and/or maintained by you, and including, but not limited to, invoices, receipts, purchase orders, POS reports, contracts and any other records and materials pertaining to your marketing, promotion, sale and service of the Products, and your use of funds related to the Agreement and your participation in a Program.

**Representatives** means a Party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

**Software or Software Products** mean(s) Our Software Products in object code form which are licensed pursuant to the EULA, defined herein.

**Source Code** means computer code and source documentation where the program logic is in human-readable form, in that it is visible to and understandable or deducible by a human being. Source Code includes printed listings of the program, or an encoded machine-readable form, such as might be recorded on magnetic tape or disk, from which a printed listing can be made by processing it with a computer, and all unlinked object files or modules created from the Source Code of that software program or computer code.

**Support** means the services that We (or an Authorized Partner) provide for the support and maintenance of the Hardware and Software, as specified in the Technical Support and Maintenance Terms and Conditions.

**Support Period or Subscription Period** means the period for which the End User is entitled to Technical Support or to use the Product, as applicable, and as specified in a Grant Letter.

**Technical Support** means the services that We make commercially available for Channel Partners to purchase under the Program, for the support and maintenance of the Cloud Services, and as described in the Technical Support and Maintenance Terms and Conditions.

**Technical Support and Maintenance Terms and Conditions** means Our terms and conditions at <https://www.trellix.com/en-us/assets/docs/legal/technical-support-and-maintenance-terms-and-conditions.pdf>.

**Term** means the duration of time when the Agreement, including these Terms, shall be legally binding and effective.

**Territory** means the country or countries where We have authorized you to resell Products, or otherwise provide services as a participant in Our Partner Program. If you are authorized to resell Products in a member country of the European Economic Area ("EEA"), then Territory is the EEA. For the avoidance of doubt, if you are domiciled within a member state of the EEA and purchase from an Authorized Distributor in a member state of the EEA, then your Territory is the EEA

**Threat Data** means non-personally identifying and non-customer identifying information about malware, threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

**Trademark Policy & Guidelines**, as amended from time to time, that govern the use of Our Marks and logos, available on the Partner Portal or as otherwise provided. <https://www.trellix.com/en-us/about/legal/trademark-policy-and-guidelines.html>.

**Trademarks** means all names, slogans, marks, symbols, logos, designs, trade dress and other brand designations.

**Trellix** means the legal entities identified in Table 1 (Section 16) above (“We,” “US,” “Our”). For the purpose of clarity, Skyhigh Security-branded Products and services may be available for purchase from the Musarubra and Trellix Public Sector legal entities identified in Table 1 unless notified otherwise.

“We” or “Our” or “Us” means any of the legal entities identified in Table 1 Section 16.8 above.

**Your Marks** mean Channel Partner’s trademarks, name, slogans, marks, symbols, logos, designs, trade dress and other brand designations.

*-End of General Terms and Conditions-*