



**APPLIANCE DIFFERING TERMS FOR THE
TIPPINGPOINT FAMILY OF APPLIANCES
EXCLUDING THE ADVANCED THREAT PROTECTION (ATP) APPLIANCE
(herein these “Appliance Differing Terms”)**

1. Introduction; Controlling Terms and Conditions. If Company is procuring a Product from Trend Micro under the Trend Micro Business Software and Appliance Agreement, effective 1 May 2017 (the “**Agreement**”) that is a TippingPoint Appliance (as defined below), the Parties agree that such Appliance is provided under the Agreement and these Appliance Differing Terms which are ancillary to, incorporated into, and form a part of the Agreement with respect to such Appliance and together the referenced documents will solely govern and control the license/sale/use/deployment/maintenance/support of such Appliance and the included Integrated Software. In each instance in which the terms and provisions of these Appliance Differing Terms are different than, conflicting or inconsistent with, or additional to, any of the terms and conditions set forth in the Agreement, all such different, conflicting, inconsistent, or additional terms and conditions set forth herein shall modify, amend, and supersede the relevant term or condition set forth in the Agreement with respect to the Appliance and the Integrated Software without the need for specific reference thereto. Unless otherwise noted, section, schedule, attachment or exhibit references in these Appliance Differing Terms shall reference the respective section, schedule, attachment or exhibit of these Appliance Differing Terms. **The terms and provisions of the Agreement, as modified, amended, and/or superseded by these Appliance Differing Terms, shall be the complete statement of the agreement of the Parties with respect to any license, sale, use, or any other right in or to such Appliance (or any component thereof) referenced herein that is made available to Company by Trend Micro for Paid Use or Test Use and 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 by agreement of the Parties.**

2. Agreed Definitions. The following additional Agreed Definitions shall apply to the Appliances including the Integrated Software. Any capitalized term used in these Appliance Differing Terms that is not otherwise defined herein shall have the Agreed Definition set forth in the Agreement.

“**Hardware**” means the Trend Micro-manufactured device (or another manufacturer if used by Trend Micro as a source for TippingPoint hardware) that forms a part of the Appliance.

“**Integrated Software**” means the object code version (only) of the Trend Micro-published TippingPoint applications software (and applicable Documentation) that is provided with the Hardware to form the Appliance or the Virtual Appliance being provided hereunder when acquired by Company. The Integrated Software is subject to the terms and conditions of the Agreement and these Appliance Differing Terms. The term Integrated Software also includes when purchased as part of paid Maintenance: (a) Updates to the Integrated Software; and (2) access to the Trend Micro Smart Protection Network service that may be used by Company in accordance with the Documentation. The license granted in these Appliance Differing Terms to Integrated Software does not grant Company the right to, and Company agrees that Company will NOT (or permit third parties to): (i) make/create a copy of the Integrated Software for any reason, including, without limitation, for backup or failover purposes when the Appliance is inoperative/unavailable; (ii) other than as a Virtual Appliance, install, deploy, or use the Integrated Software on any device other than the original Appliance provided by Trend; or (iii) used for any other purpose other than as permitted in the Documentation. Integrated Software is never licensed in any event or circumstance for a Perpetual Period and is always subject to termination on the occurrence of a License Termination Event or in any other event set forth in the Agreement. **Except as amended, modified, and/or superseded in these Appliance Differing Terms, Integrated Software shall be included in the definition of, and treated as, Software for all purposes of the Agreement.**

“**License Termination Event**” means the occurrence of an event or circumstance by which the license for Integrated Software granted to Company under the Agreement will terminate immediately and without notice, it being understood and agreed that such License Termination Event shall be the earliest to occur of the following: (1) the Integrated Software is uninstalled from the Appliance; (2) the Appliance or Integrated Software is used for any purpose other than as permitted in the Documentation or the Agreement; (3) the Hardware is retired, removed from service, or Repurposed; (4) the Hardware portion of the Appliance is repaired, modified, or the internal works are otherwise accessed by Company without permission of Trend Micro; (5) the Test Period expires if applicable; or (6) either Party provides notice of termination of the Test to the other Party for any reason or no reason. License Termination Events in these Appliance Differing Terms are in addition to the rights of the Parties to terminate under Section 7 of the Agreement.

“**Non-Production Environment**” means Company’s use of an Appliance and Integrated Software exclusively in a laboratory, test, or research environment (and not in Company’s production environment/systems) that does not access or use live production data at any time or for any reason.

“**Paid Use**” means any access, deployment, or use of an Appliance/Integrated Software by Company that: (1) has been purchased by Company pursuant to the Agreement; and/or (2) Company in any way or manner deploys and/or uses Appliance/Integrated Software other than in a Non-Production Environment.

“**Repurpose**” means for purposes of these Appliance Differing Terms: (1) Company configuring, deploying, and/or using the Hardware in any manner or for any purpose not described and expressly permitted in the Documentation for the Integrated Software/Appliance or the Agreement; or (2) by Company installing additional/different software to the Appliance that is not in accordance with and specifically permitted by the Documentation with respect to Custom Sandboxing.

“**Speed License**” means a subscription purchased by Company which, when mated with an Appliance or Virtual Appliance, permits that mated Appliance or Virtual Appliance to operate at a prescribed level of data throughput. A Speed License is not considered Software under the Agreement and it not licensed separately from the Integrated Software or Virtual Appliance with which it is used, as the case may be. A Speed License is not required for all Appliances.

“**Test Period**” shall have the meaning set forth in Section 3.1 below.

“**Test Use**” or a “**Test**” means the gratuitous right granted to Company on the terms and subject to the conditions hereof, to conduct an evaluation, proof-of-concept, trial, or test of an Appliance and its Integrated Software only in a Non-Production Environment for a Test Period as defined in Section 7.1 of the Agreement.

“**TippingPoint Appliance**” or “**Appliance**” as used herein these Appliance Differing Terms, means Trend Micro’s TippingPoint family of single-purpose, single-tenant, hardware-based appliances and any additional, renamed, or successor hardware-based appliances that are based on and include a version the Integrated Software, but shall not include the Advanced Threat Protection (ATP) appliance, which ATP appliance has separate TippingPoint Appliances Differing Terms v. 1.0 May 1, 2017

Appliance Differing Terms from those of other TippingPoint appliances. Each Appliance is composed of Hardware and Integrated Software. When acquired by the Company for any use other than Test Use, the Hardware portion of the Appliance is sold and the Integrated Software portion is licensed in accordance herewith by Trend Micro. Each Appliance acquired for Paid Use that is shipped to Company includes Hardware and Integrated Software that is installed by Trend Micro prior to delivery of the Appliance to Company.

“Virtual Appliance” means for purposes of these Appliance Differing Terms a version of Integrated Software designed and licensed to operate without an Appliance. A Virtual Appliance is governed by the Agreement as Software and by these Appliance Differing Terms as Integrated Software.

3. Test License; Test Use. For the avoidance of doubt, Integrated Software accessed by Company for a Test is Test Software under Section 7.1 of the Agreement.

3.1 Test Use – Appliance. In instances that the Agreement authorizes Company to Test an Appliance, Trend Micro will supply the Appliance without charge to Company for the duration of the Test Period unless earlier terminated by a Termination Event. The Parties agree that the Appliance may ONLY be deployed and used by Company on its premises and by its employees at the location that the Appliance is shipped to by Trend Micro for the purpose of Company performing a Test for no more than thirty (30) days (unless Company is allowed a longer time by Trend Micro in writing) after shipment of the Appliance to Company (the “Test Period”).

3.2 Test Use – Integrated Software. If Company is permitted to receive a Test of an Appliance, Trend Micro grants Company for such Test Use, a no charge, a non-exclusive, non-transferable, non-assignable, non-sublicensable, revocable Test Use license (only) to the Integrated Software that may ONLY be installed and used on the Hardware forming a part of the Appliance shipped to Company by or on behalf of Trend Micro. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 3.2 with respect to Integrated Software used in connection with a Test.

3.3 Test Use – Hardware Loan. Trend Micro retains all right, title, and interest in and to the Hardware forming part of any Appliance provided hereunder for Test Use. If requested by Trend Micro, the Company will affix any label or marking to the Appliance so requested and will not remove, deface, or obscure any such label or marking. This is a gratuitous loan of the Hardware and is not an asset transfer. Company agrees that it will not (and will not attempt to) sell, transfer, convey, assign, loan, lease, pledge, or in any way encumber (or permit third parties to encumber) an Appliance or its Hardware and, further, the Parties agree that any attempt to do any of the foregoing shall be void. Except as may be specifically agreed in a subsequent writing by Trend Micro, Company agrees it will not, and will not permit third parties to: repair, modify, or otherwise attempt to access the internal works of any Hardware supplied hereunder, it being understood that any such action will be the sole right of Trend Micro or its designee.

3.5 Hardware Usage. With respect to the Test of an Appliance, Company shall at all times keep the Appliance and any power cords, sockets or accessories (the “Accessories”) supplied by Trend Micro with the Appliance and, further, Company agrees to protect the Appliance and Accessories from loss or physical damage. Company shall promptly notify Trend Micro of any loss or physical damage to the Appliance and/or Accessories and Company agrees to pay Trend Micro for any damage to the Appliance and/or Accessories while in Company’s custody unless such damage resulted from actions of Trend Micro, its employees, or agents.

3.6 Warranty/Representation/Disclaimer. TREND MICRO MAKES NO PROMISES, REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EITHER EXPRESS, STATUTORY OR OTHERWISE RELATING TO THE APPLIANCE, INTEGRATED SOFTWARE, DOCUMENTATION OR CONFIDENTIAL INFORMATION UNDER THE AGREEMENT, ALL OF WHICH IS PROVIDED TO COMPANY HEREUNDER “AS IS, WITH ALL FAULTS,” AND, FURTHER, TREND MICRO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. TREND MICRO DOES NOT WARRANT THAT THE APPLIANCE OR INTEGRATED SOFTWARE WILL MEET COMPANY’S NEEDS/REQUIREMENTS OR OTHERWISE OPERATE WITHOUT ERROR OR INTERRUPTION. COMPANY SHALL HAVE THE SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA, SYSTEMS, AND/OR EQUIPMENT USED WITH THE APPLIANCE OR INTEGRATED SOFTWARE TO CONDUCT ANY TEST. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED BY THE FOREGOING DISCLAIMER, BUT MAY BE LIMITED, TREND MICRO’S LIABILITY AND THAT OF ITS SUPPLIERS AND RESELLERS UNDER THE TEST OF THE APPLIANCE AND ITS INTEGRATED SOFTWARE, SHALL BE LIMITED IN THE AGGREGATE TO THE SUM OF FIVE HUNDRED DOLLARS (USD\$500.00) OR THE EQUIVALENT IN LOCAL CURRENCY.

3.7 Test Use License - Termination. Company’s possession and use of the Appliance and/or the Integrated Software and the Agreement will terminate immediately and without notice on the occurrence of a Termination Event as to the Appliance that is the subject matter thereof.

3.8 Hardware Return. Unless Company elects to purchase the unit of the Appliance that has been the subject of Test Use hereunder on termination of such Test Use, Company shall return the Appliance and Accessories, in good condition (less normal wear and tear), including any Documentation supplied by Trend Micro to the address indicated by Trend Micro within ten (10) calendar days of the Termination Event. Except as otherwise agreed by Trend Micro, all freight/insurance/risk of loss for returning the Appliance, Accessories and Documentation shall be for the account of Trend Micro.

3.9 Acknowledgement. The Appliance and/or Integrated Software or any component thereof is subject to change and modification, including, without limitation, changes and modifications with respect to performance, functionality and appearance at any time at the sole discretion of Trend Micro.

3.10 Registration and Information Collection. As a condition to the use and receipt of the Appliance and/or Integrated Software for Test, Company may be required to register with Trend Micro and provide Trend Micro with limited administrative and network data, including, but not limited to, name, address and/or company name as well identity/contact information of Company’s systems administrators/technical staff. Company consents to having such limited personal data stored outside the country and/or in jurisdictions where privacy laws may not be as stringent as those in the location that the Appliance is deployed in accordance herewith.

3.11 Benchmarking. Company may use the Appliance for comparison with or benchmarking against similar third party products or services being evaluated by Company; *provided, however*, as a condition of Trend Micro granting the foregoing permission, Company agrees that it will not publish, provide, or otherwise make available the results of any comparison/benchmarking or any analysis thereof to any third party without the written permission of Trend Micro which may be withheld at the sole discretion of Trend Micro.

4. Paid Use License Appliance and Integrated Software. This Section 4 of these Appliance Differing Terms is applicable to any Paid Use of an Appliance.

4.1 ~~For~~ Integrated Software. Sections 2.1 and 2.2 of the Agreement are merged into and superseded by this Section 4 with respect to Integrated Software licensed for Paid Use. On the terms and subject to Company's continuous compliance with the conditions set forth in the Agreement and on the condition precedent of Company making payment as directed in Section 1.3 of the Agreement, Trend Micro grants to Company (solely for the internal business operations and purposes of Company or any of its Affiliates as permitted in Section 2.5 of the Agreement) only until the occurrence of a Termination Event (unless earlier terminated in accordance with Section 7 of the Agreement), and Company accepts, a non-exclusive, non-transferable, non-assignable/non-assumable (by operation of law or otherwise), and revocable (only as permitted in and in accordance with the Agreement) right and license: (1) to activate, execute, deploy, and use (only in accordance with the Documentation) the object code version of the Integrated Software and Updates thereto purchased by Company solely on the unit of Appliance originally shipped to Company by or through Trend Micro or its Reseller; and (2) only if provided as part of paid Maintenance, to (at Company's option) enable, access, and/or utilize only as described in the Documentation, the Smart Protection Network portion of such Integrated Software if SPN is a feature of such Integrated Software. Company understands that Maintenance of the Integrated Software is separate from any maintenance, support, and warranty of the Hardware unless otherwise stated in the License Certificate. Company acknowledges that the Integrated Software is never licensed for a Perpetual Period.

4.2 Speed License; Virtual Appliance. Where an Appliance or Virtual Appliance requires a Speed License, the license for Integrated Software granted in Section 4.1 is further conditioned upon the purchase of such Speed License and the lapse of the Speed License shall be a License Termination Event under Section 7 of the Agreement for the Appliance or Virtual Appliance for which the Speed License has lapsed.

4.3 Documentation. Company is granted a license to reproduce a commercially reasonable number of copies of the Documentation and training materials (if any) for Integrated Software and the Appliance for use only while Company has a valid license to the Integrated Software under these Appliance Differing Terms and the Agreement, provided that all such copies contain the same copyright and proprietary rights notices which appear on the original material provided to Company by Trend Micro and no modifications, deletions, additions or supplements are made to or included with such Documentation and/or training materials except and to the extent as may be authorized in writing by Trend Micro.

4.4 ~~3~~ Additional License Rights/Limitations. The license granted in this Section 4 does not grant Company the right to, and Company agrees that Company will not: (1) remove, add, or substitute any third party software to the Appliance; (2) separately sell, lease, rent, license, sublicense or otherwise transfer in whole or in part, the Integrated Software or related Documentation to any third party; (3) notwithstanding anything contained in the Agreement to the contrary, make/create a copy of the Integrated Software for backup or failover purposes for use when the Appliance is inoperative/unavailable; or (4) use Integrated Software to provide services of any kind to a third party. The Parties agree that except as set forth in this Section 4, it is agreed that the rights, restrictions, and limitations set forth in the Agreement (other than Sections 2.1 and 2.2 of the Agreement) with respect to Software also apply to the Integrated Software.

4.5 ~~4~~ Paid Use License Warranty – Integrated Software. For Paid Use licenses of Integrated Software, Trend Micro warrants only to Company that for ninety (90) days following Company's first use of a registration key or activation code (whichever comes first) for the Integrated Software ONLY, the Integrated Software will materially conform with the applicable Documentation, as Updated from time to time, including "ReadMe" files and release notes that may be made available therewith. The Parties expressly acknowledge that Company's exclusive remedy for non-conformance with the foregoing warranty and Trend Micro's sole liability with respect thereto, is set forth in Section 11.1 of the Agreement.

4.6 ~~5~~ Maintenance of Integrated Software. When licensed by Company for a Paid Use in accordance herewith, Maintenance of Integrated Software is provided by Trend Micro in accordance with Section 4.1 above and Section 5 of the Agreement.

5. Additional Hardware Specific Terms.

5.1 Trend Micro Hardware Warranty. TippingPoint Appliances are covered by the TippingPoint Product Limited Warranty located at https://tmc.tippingpoint.com/TMC/ShowDocuments?parentFolderId=gadocs&contentId=hardware_limited_warranty.pdf.

5.2 New Versions. For the avoidance of future confusion, the Parties agree that the term New Versions that may be made available as part of paid Maintenance then-in-effect at the time of release ONLY refers to such that are made available with respect to Integrated Software and DOES NOT refer to a new or improved version or model of the Appliance or Hardware component.

5.3 Repurpose of the Hardware – Paid Use. Notwithstanding anything to the contrary in these Appliance Differing Terms, since Company is the owner of the Hardware purchased for Paid Use, Company may determine to Repurpose the Hardware component of any unit of Appliance purchased by Company at any time by giving Trend Micro written notice of Company's intention to undertake such action. In the event the Hardware is Repurposed by or on behalf of Company, such action is a License Termination Event with respect to the Integrated Software and the license therefor will immediately terminate without notice and or credit of amounts paid with respect thereto. The Parties agree that if any Hardware is Repurposed, Integrated Software may in no event or circumstance be reinstalled in the original Hardware or transferred to any other device.

5.4 Paid Use Title; Hardware Ownership. Title and risk of loss for the Hardware component of an Appliance that is sold to Company for Paid Use is transferred to Company at Trend Micro's (or its manufacturer's or systems integrator's) dock when loaded onto the first carrier for shipment to Company.