

# END-USER LICENSE AGREEMENT FOR VMRAY SOFTWARE VERSION 16

THIS END-USER LICENSE AGREEMENT ("**EULA**") IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AS A LICENSEE AND LICENSOR (DEFINED BELOW). IT COVERS THE TERMS AND CONDITIONS FOR THE LICENSEE'S POTENTIAL USE OF THE VMRAY SOFTWARE AND SERVICES.

LICENSOR AND LICENSEE SHALL BE REFERRED TO COLLECTIVELY AS "**PARTIES**" OR INDIVIDUALLY AS "**PARTY**". NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY STATED HEREIN, IF LICENSEE AND LICENSOR HAVE EXECUTED A DIFFERENT WRITTEN AGREEMENT FOR ACCESS TO OR USE OF THE SOFTWARE ("**SIGNED AGREEMENT**"), THEN THE TERMS OF THE SIGNED AGREEMENT SHALL GOVERN, AND CONTROL AND THIS EULA SHALL HAVE NO EFFECT.

## Definitions.

**Affiliate:** Any person or entity which directly or indirectly owns, controls, is controlled by, or is under common control with a Party, where control is defined as owning or directing more than fifty percent (50%) of the voting equity securities or a similar ownership interest in the controlled entity.

**Analysis:** Analyzing Samples in different ways to generate Verdicts or Analysis Reports. One Analysis involves one or multiple Analysis Jobs, which depending on the configuration and license, are either executed sequentially or in parallel.

**Analysis Job:** One single task to analyze a Sample with a specific method and configuration in order to generate Verdicts or Analysis Reports. Available methods include Reputation Lookup, Static Analysis, Dynamic Analysis, and others.

**Analysis Report:** Set of human and machine-readable files describing security-relevant findings for a Sample, e.g., threat indicators, related network traffic, or Verdict.

**Confidential Information:** Any non-public information communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, Software specifications, documentation, pricing, and any benchmark data and results produced. For clarification, data included in a Verdict shall not be deemed to be Confidential Information.

**Dynamic Analysis:** Analyzing a Sample in a controlled execution environment by executing it directly (in case of an executable) or opening it within an associated application (in case of a data document) to log and analyze its behavior and identify potentially harmful activities.

**Hash Value:** Numeric value to represent and identify a (potentially large) block of data without the need to share the actual data itself and generated by using one way hash functions such as SHA256 making it impossible to reconstruct the original data.

**Licensee:** The entity, including its Affiliates, entering into this EULA with Licensor.

**Licensor:** Either VMRay, Inc., a Delaware United States of America ("**U.S.**") corporation, located in 22 Boston Wharf Road, 7<sup>th</sup> Floor Boston, MA 02210 (U.S.), or VMRay GmbH, a German company, located in Universitaetsstraße 142, Bochum (Germany), as specified in the

invoice which relates to this EULA. In the absence of such invoice, Licensor shall be VMRay, Inc., if Licensee resides in the Americas (North, Central or South America), or VMRay GmbH, if Licensee resides outside of the Americas.

**Open Source Component:** Any code, programming, or other content licensed from a third-party (or derived from or developed with such third-party materials) subject to an open-source license.

**Reputation Data:** Network indicators (URLs, domain names, IP addresses) and Hash Values observed during Analysis that can be used with Reputation Lookups to increase the efficacy and efficiency of an Analysis.

**Reputation Lookup:** Looking up Reputation Data in a database of known good and known bad values.

**Reseller:** An authorized third party who distributes licenses for the Software to Licensee under the terms of an agreement between Licensee and such Reseller ("**Reseller Agreement**").

**Sample:** Data submitted by Licensee for Analysis (e.g., Office file, executable, URL, Hash Value, or email) and optional analysis instructions and configuration settings (e.g., command line parameters or prescripts).

**Site:** The geographic location where Licensee first installs or uses the Software.

**Software:** Software and all accompanied components (executables, documentation, and all other files provided) licensed by Licensor to Licensee under this EULA and its parts, including without limitation Annexes, purchase orders and invoices.

**Static Analysis:** Analysis of a Sample by examining its structure and content to identify potentially harmful elements.

**Updates:** Upgrades, updates, patches, and hotfixes for the Software that replace or supplement the original Software.

**Verdict:** Grade of maliciousness of a Sample, usually represented as numeric values (e.g. number between 0 and 100) and textual descriptions (e.g., "malicious" or "suspicious"). For the sake of clarity: Verdict does not contain any data provided by Licensee, and it is technically impossible to reconstruct from it any Licensee data.

IF LICENSEE ACQUIRES A LICENSE FOR THE SOFTWARE FROM A RESELLER, THE TERMS OF THE RESELLER AGREEMENT SHALL GOVERN LICENSEE'S USE OF THE SOFTWARE AND NOT THIS EULA. RESELLERS MAY ONLY GRANT RIGHTS, AND MUST PASS THROUGH CONDITIONS, CONSISTENT WITH THIS EULA.

ANY INVOICE RELATING TO THIS EULA IS DEEMED TO BE PART OF THIS EULA AND IS HEREBY INCORPORATED INTO THIS EULA BY REFERENCE.

LICENSOR LICENSES THE SOFTWARE TO INDIVIDUALS (E. G. RESEARCHER ACCOUNTS) ONLY IN EXCEPTIONAL CIRCUMSTANCES, AS IT IS AN ENTERPRISE SOFTWARE SOLUTION.

IF YOU DO NOT AGREE TO BE BOUND BY THIS EULA DO NOT DOWNLOAD THE SOFTWARE OR, IF THE SOFTWARE HAS BEEN DELIVERED ON ELECTRONIC STORAGE MEDIA: (i) DESTROY SUCH ELECTRONIC STORAGE MEDIA, OR (ii) RETURN IT. IF THE SOFTWARE HAS ALREADY BEEN DOWNLOADED THEN IMMEDIATELY DELETE THE SOFTWARE. IF APPLICABLE, YOU WILL BE REFUNDED. ONCE THE SOFTWARE HAS BEEN INSTALLED, ALL OF THE PROVISIONS OF THIS EULA APPLY, EVEN IF THE SOFTWARE IS SUBSEQUENTLY DELETED OR RETURNED. ANY USE OR INSTALLATION OF THE SOFTWARE BY THE LICENSEE SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THIS EULA.

## **1. License, Restrictions and Support.**

1.1 Subject to the terms and conditions hereof, the Software is provided on a temporary-use, non-exclusive, non-assignable, and non-transferable basis, and may not be copied (except as set forth in Section 1.2), modified, or enhanced without the advance written authorization of Licensor.

1.2 Licensee may make one or more copies for back-up or disaster recovery purposes, provided that Licensee agrees to not grant access to such copies to any other individual, company or entity.

1.3 Depending on the license type selected by Licensee the following restrictions apply:

1.3.1 This EULA permits Licensee to use the Software solely at its Site.

1.3.2 The Software may only be installed on one productive server at the same time.

1.3.3 The Software may only be used during the agreed Term or Trial Period.

1.4 Detailed specifications for the Software and the respective license types are defined in ANNEX A ("Software Specifications"), hereby incorporated into this EULA by reference.

1.5 The Software may be used only for its intended purpose of improving security and protecting computing infrastructure.

1.6 The Software may not be used: (i) in any way that is unlawful, illegal, fraudulent or harmful, (ii) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity, (iii) for benchmarking studies, or (iv) for the purpose of competing with Licensor in any manner.

1.7 Licensee may not modify, disassemble, reverse compile, or reverse engineer the Software.

1.8 This license is granted to Licensee for internal use only. Licensee may not: (i) sell, lend, assign, lease, or transfer this EULA, the related license, or any copy of the Software, (ii) create

any derivative works or other works that are based upon or derived from the Software in whole or in part, or (iii) attempt to do any of the foregoing, except, and only to the limited extent, that it is expressly permitted by applicable law. The aforementioned prohibited circumventions of the internal use restriction include, but are not limited to: (i) providing a mechanism enabling third parties to submit Samples (ii) providing Analysis Reports and Verdicts created by the Software to third parties, or (iii) providing services or products to third parties, where malware detection or analysis capabilities are built in whole or in part on the Software. Any behavior prohibited by this Section shall be a material breach of this EULA for which Licensor reserves all rights and remedies.

1.9 Licensee acknowledges that the Software may not be available: (i) after the license period has expired, (ii) if Licensee fails to pay fees as required, or (iii) if Licensee is in material breach of this EULA in any other manner and has failed to cure such violation after respective request in accordance with Section 12.4 hereof.

1.10 It is highly recommended that Licensee installs all Updates released by Licensor without unnecessary delay. If Licensee has not installed any Update which would have avoided the arising of a claim based on Section 6 (Warranties), Section 8 (Indemnification) and Section 9 (Liability), Licensee hereby expressly waives all rights regarding any and all such claims.

1.11 Licensor will provide service and support as set forth in Annex B ("Service and Support Provisions"), hereby incorporated into this EULA by reference.

## **2. Copyright and Open Source.**

2.1 The Software is protected by worldwide copyright, trade secret and other intellectual property laws and treaties. Licensor is authorized to grant the rights and licenses provided in this EULA. Licensee agrees to not alter or delete any copyright notice or other proprietary rights notice contained in the Software.

2.2 The Software contains no Open Source Components under any terms that may require Licensee to: (i) license patents, copyrights, trade secrets, data, programs, applications, interfaces or other intellectual property to any third party, or (ii) pay an additional fee for use of the Software.

2.3 A list of Open Source Components as well as other embedded third party components and related license agreements is available via the user interface of the Software.

## **3. Data Processing; Data protection.**

3.1 The Software stores all data (including access logs) that is necessary for the purposes of this EULA. Except as provided otherwise herein such data may be used for the purposes of this EULA only.

3.2 Licensee acknowledges and agrees that the use of the Software involves a necessary data transfer between the Affiliates VMRay GmbH and VMRay, Inc., and that the transfer of any personal data between these Affiliates takes place on the basis of a Data Processing Agreement ("**DPA**") in compliance with the provisions of the General Data Protection Regulation ("**GDPR**"). The transfer of any personal data from VMRay GmbH to VMRay Inc. is additionally protected by an Agreement on the Standard Contractual Clauses ("**EU Model Clauses**"). Licensor agrees that it will upon request enter into a further DPA with Licensee, to

document the adequate level of data protection for any personal data that may be transferred.

3.3 The Software may collect and utilize statistical information generated by Licensee's use of the Software ("**Usage Statistics**"), but only for purposes of research and development of future VMRay products and for the improvement of the Software. For clarification, Usage Statistics do not include Samples, Analysis Reports and/or personal data. Nothing in this section shall permit Licensor to provide Usage Statistics to any third party other than as expressly permitted by this EULA. The Software only transfers Usage Statistics if an internet connection is established, and Licensee has not deactivated this feature.

3.4 To enhance reaction time and accuracy, the Software is able to utilize Reputation Lookups and integrate their results into Analysis Reports and Verdicts. If activated (and only then) Reputation Data may be transferred to external service providers of VMRay GmbH ("**VMRay ESPs**") and/or of Licensee ("**Licensee ESPs**").

3.4.1 VMRay ESPs may be located outside of Germany and/or the U.S. and are bound by DPA and/or EU Model Clauses to process any Reputation Data only in accordance with data protection standards not less restrictive than the terms and conditions of this EULA. When utilizing VMRay ESPs the Reputation Lookup is always originating from VMRay GmbH's server and thus the identity of the Licensee is not disclosed.

3.4.2 When utilizing Licensee ESPs, the Software may transfer Reputation Data directly to the activated Licensee ESPs under Licensee's own responsibility.

3.5 The Software is able to integrate certain program features performed by additional external service providers of Licensee. If actively enabled by Licensee in the Software (and only then), the Software may directly transfer data to such external service providers and Licensee shall be solely responsible for this data transfer.

3.6 All data transferred under Licensor's responsibility will be protected by Licensor against unauthorized access and disclosure using the same degree of care Licensor uses to protect its own information of like importance, but in no case less than a reasonable degree of care.

3.7 Licensor may disclose any data stored or information received in the course of exercising its rights and obligations under this EULA only to the extent required by law or any applicable regulatory or government authority, and then only after providing prior written notice to Licensee, provided there is reasonable time and possibility to send such notice.

3.8 Licensee has no right to inspect Licensor's premises, Software or related data systems.

#### **4. Confidentiality.**

4.1 The Software includes significant non-public elements, including its structure, algorithms, logic, flow, know-how, programming techniques, ideas, and design that are protected and maintained as proprietary trade secrets, which may also be protected under copyright and other intellectual property laws and treaties. Licensee shall not use or disclose any such trade-secret protected information to third parties during and after the Term of this EULA and for so long thereafter as such trade secret-protected information remains protected as trade secrets under applicable law.

4.2 The Parties agree that when receiving Confidential Information from the disclosing Party, the receiving Party shall hold it in confidence and shall not disclose or use such information

except as necessary to carry out the purpose of this EULA. The receiving Party shall treat the disclosing Party's Confidential Information confidentially and in the same manner as it treats its own proprietary and/or Confidential Information, which shall not be less than a reasonable standard of care. Confidential Information may be disclosed to receiving Party's employees, Affiliates, agents, financial advisors, contractors and attorneys on a need-to know basis, and the receiving Party shall ensure that such persons are: (i) obligated to maintain professional secrecy, or (ii) subject to signed confidentiality agreements that are at least as restrictive as the terms of the EULA.

4.3 The receiving Party may disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the receiving Party shall, where reasonably possible, give the disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the disclosing Party to obtain a protective order.

4.4 Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.

4.5 Nothing in the EULA will: (i) preclude Licensor from using the ideas, concepts and know-how which are developed in the course of providing any services to Licensee or (ii) be deemed to limit Licensor's rights to provide similar services to other customers. Licensee agrees that Licensor may use any feedback provided by Licensee related to any Licensor service for any Licensor business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.

4.6 The receiving Party agrees, upon request of the disclosing Party, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.

4.7 In the event of a breach of the obligations in this section, the disclosing Party may not have an adequate remedy at law. The Parties therefore agree that the disclosing Party may be entitled to seek the remedies of temporary and permanent injunction, specific performance or any other form of equitable relief deemed appropriate by a court of competent jurisdiction.

## **5. Confidential Vulnerability Notification.**

In the event Licensee becomes aware of attack scenarios that could lead to an exploitable vulnerability of the Software, Licensee shall immediately notify Licensor and shall keep such information strictly confidential unless specific written authorization has been granted by Licensor to Licensee: (i) allowing Licensee to disclose this information to third parties, and (ii) enabling Licensor to follow a responsible disclosure process towards Licensor's customers. Licensee acknowledges that irreparable damage may result to Licensor, its

business, property and goodwill in the event of a breach or threatened breach by Licensee of this Section.

## **6. Limited Warranties; Disclaimers.**

6.1 Licensor warrants that the Software itself contains no malware.

6.2 Licensor warrants: (i) that the Software will operate substantially in accordance with the specifications found in ANNEX A, and (ii) that Licensor will perform its obligations under this EULA with reasonable care and expertise.

6.3 The Software examines the content, structure and behavior of unknown – and most probably malicious – Samples. Despite Licensor's commercially reasonable care, Analysis may cause: (i) incomplete or incorrect Analysis Reports as well as incorrect Verdicts (i.e., benign Samples incorrectly marked as malicious and/or malicious Samples incorrectly marked as not malicious), and/or (ii) the exploitation of vulnerabilities unknown at the time. Licensor does not give a respective warranty, condition, undertaking, indemnity or other comfort.

6.4 Licensee's sole and exclusive remedy for the breach of the limited warranty as set forth in this Section 6 shall be, at Licensor's option, either a reasonable refund for the fees paid for the use of the non-conforming Software during, and limited to, the period in question (less any taxes, shipping fees, etc.), or the prompt repair or replacement of any non-conforming Software.

## **7. General Warranty Disclaimers.**

7.1 THE SOFTWARE UTILIZES DYNAMIC ANALYSIS TO OBSERVE THE BEHAVIOR OF SAMPLES AND IDENTIFY SUSPICIOUS AND MALICIOUS ACTIVITY. TO ACHIEVE THE BEST POSSIBLE RESULTS, NO EFFORTS ARE TAKEN TO SUPPRESS, BLOCK OR WEAKEN ANY ACTION, INCLUDING WITHOUT LIMITATION, ANY POSSIBLY MALICIOUS OR DESTRUCTIVE EFFECTS. IF LICENSEE ALLOWS THE SOFTWARE TO CONNECT TO A NETWORK, IT IS LICENSEE'S SOLE RESPONSIBILITY TO ENSURE AND GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER.

7.2 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS". LICENSOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, CORRECTNESS, COMPLETENESS OF RESULTS. THIS DISCLAIMER SHALL APPLY EVEN IF THE LIMITATIONS SET FORTH HEREIN FAIL OF ITS ESSENTIAL PURPOSE.

7.3 THE SOFTWARE IS NOT DESIGNED OR MANUFACTURED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS, WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT SYSTEMS, MEDICAL SYSTEMS, TRANSPORT MANAGEMENT SYSTEMS, OR WEAPON OR COMBAT SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO PERSONAL

INJURY, DEATH, OR PROPERTY OR ENVIRONMENTAL DAMAGE. LICENSOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES.

## **8. Indemnification.**

8.1 Licensor will indemnify, defend and/or, at its option, settle any third party claims that Licensee's use of the Software infringes any valid patent or copyright within the jurisdictions where Licensee is authorized to use the Software at the time of delivery, provided that: (i) Licensee gives Licensor prompt written notice thereof and reasonable cooperation, information and assistance in connection therewith; (ii) Licensor shall have sole control and authority with respect to defense or settlement of any claim; and (iii) Licensee takes no action that is contrary to Licensor's interest. Licensor may, at its option and expense, as Licensor's sole obligation: (a) procure for Licensee the right to continue to use the Software; (b) repair, modify or replace the Software so that it is no longer infringing; or (c) terminate the EULA, in which case Licensor shall provide a pro-rated refund of the fees paid for the Software (directly or through any participating Reseller) which gave rise to the indemnified claim, such pro-rated refund to be calculated against the remainder of the Term from the date it is established that Licensor is notified of the third party claim.

8.2. Licensor shall have no liability arising out of this Section 8 or otherwise: (i) in the event the claim is a result of a modification of the Software not made by Licensor, if: (ii) the Software is not being used in accordance with Licensor's specifications, related documentation and guidelines, (iii) the alleged infringement is subject to any limitation of warranty or disclaimer set forth in Section 6 and/or 7, (iv) the alleged infringement would be avoided or otherwise eliminated by the use of a Licensor-published Update, (v) the alleged infringement is a result of use of the Software in combination with any third party product, or (vi) the applicable fees have not been paid or Licensee is otherwise in breach of this EULA. The indemnifications contained herein shall not apply and Licensor shall have no liability in relation to any Software produced by Licensor at the specific direction of Licensee. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATION OF LICENSOR REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO LICENSEE REGARDING ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

8.3. Each Party shall indemnify the other against all damages, fees, (including reasonable attorney's fees) fines, judgments, costs and expenses finally awarded as a result of a third party action alleging: (i) bodily injury or death to persons, or (ii) damage to tangible property, which arises under the EULA, provided that such liabilities are the proximate cause of gross negligence or intentional misconduct on the part of the indemnifying Party.

8.4. Licensee shall indemnify Licensor against any claim that any data, materials, items or information supplied to Licensor by Licensee under the EULA infringes any patent, copyright or trademark within the jurisdictions where Licensor is provided with such information.

## **9. Limitation of Liability.**

9.1 EXCEPT FOR A BREACH OF SECTION 4 (CONFIDENTIALITY) AND OF THIRD-PARTY CLAIMS ARISING UNDER SECTION 8 (INDEMNIFICATION), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND LICENSEE, INCLUDING ANY OF THEIR



DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLED OR CONTROLLING ENTITIES, OR SUB-CONTRACTORS, SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, INTERRUPTION, LOSS OF USE OF SERVICE OR EQUIPMENT, ETC.) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS EULA OR LICENSEE'S USE, OR THE INABILITY OF LICENSEE TO USE, THE SOFTWARE, EVEN IF THE PARTY CAUSING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE WARRANTY RESTRICTIONS AND DISCLAIMERS PROVIDED IN SECTIONS 6 AND 7 ABOVE ARE EXPRESSLY INCORPORATED INTO THIS LIMITATION OF DAMAGES.

9.2 IN ANY CASE, LICENSOR'S AND ANY OF ITS DIRECTORS', OFFICERS', EMPLOYEES', CONTROLLED OR CONTROLLING ENTITIES', OR SUBCONTRACTORS' ENTIRE AGGREGATED CUMULATIVE LIABILITY OBLIGATION TO LICENSEE FOR ALL LOSSES, DAMAGES, CLAIMS, OR SUITS OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR BREACH OF THIS EULA SHALL BE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LIMITED TO THE AMOUNT ACTUALLY PAID BY THE LICENSEE FOR THE SOFTWARE UNDER THE PURCHASE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

9.3 LICENSOR SHALL NOT BE LIABLE FOR ANY EXTERNAL SERVICE PROVIDERS OF LICENSEE OR THE RESULTS OF THEIR SERVICES AND LICENSEE EXPRESSLY DECLARES THAT NO CLAIMS WILL BE ASSERTED AGAINST LICENSOR IN THIS REGARD.

9.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY SHALL BE BARRED FROM MAKING ANY CLAIM AGAINST THE OTHER AFTER TWELVE (12) MONTHS FROM THE ACCRUAL OF THE CLAIM.

## **10. U.S. Government End Users.**

The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software", "computer database", and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (or an equivalent provision, e.g., in supplements of various U.S. Government Agencies, as applicable), all U.S. Government End Users, whether this concerns GSA Multiple Award and Federal Supply Schedule acquisitions, FAR acquisitions, DOD acquisitions or other acquisitions whatsoever, acquire the Software only as "commercial items" and only with those rights as are granted to all other end users pursuant to the terms and conditions set forth herein, as provided in FAR 12.212, and DFARS 227.7202-1(a), 227.7202-3(a), 227.7202-4, as applicable.

## **11. Limitation on Exports.**

11.1 In some jurisdictions, using the Software, or materials provided related to or generated with the Software, may be subject to export or import regulation. Licensee represents and warrants to comply with all such regulations and obtain all governmental approvals, consents, licenses, authorizations, declarations, filings and registrations as may be necessary or advisable for the use of the Software or related materials provided with, related to, or generated with the Software.

11.2 The Software is an EAR99 classified item. Thus, except in full compliance with all U.S. and other applicable laws and regulations, Licensee: (i) will not export or re-export, directly or indirectly, the Software, or materials provided related to or generated with the Software, outside of the state/jurisdiction where Licensee first installed the Software; and (ii) will not make the Software accessible to an end-user of concern or in support of a prohibited end-use.

11.3 Licensee acknowledges that Licensee is not (i) ordinarily resident in, located in, or organized under the laws of any country or region subject to economic or financial sanctions or trade embargoes imposed, administered, or enforced by the European Union or the U.S.; (ii) an individual or entity on any sanctions or restricted persons lists maintained by the European Union or the U.S.; or (iii) otherwise the target or subject of any Sanctions and Export Control Laws.

## **12. Term and Termination.**

12.1 If not otherwise agreed upon and confirmed in the invoice, and depending on the license type chosen by Licensee, the regular term ("**Term**") of this EULA shall be either a subscription period as defined in the invoice ("**Subscription License**") or perpetual ("**Perpetual License**").

12.2 During the Term, Licensee shall pay fees as stated in the invoice issued to Licensee.

12.3 Unless agreed upon otherwise, the Term will start on the date of the invoice. If Licensor delivers the license key to Licensee before that date as a voluntary service, the Term shall start on the date of license key delivery.

12.4 Either Party may terminate this EULA immediately by giving written notice to the other Party for any material breach of this EULA that is not cured within thirty (30) days after written notice of such breach.

12.5 At the end of the subscription period, this EULA will terminate automatically. In case of a Perpetual License, Licensee may terminate this EULA for convenience by giving written notice not less than thirty (30) days prior to the end of a calendar year.

12.6 Upon termination, Licensee shall destroy the Software, all accompanying materials, and all copies thereof. Except as otherwise expressly stated herein, any provisions of this EULA that by their nature would survive will survive the termination and continue according to their terms. Termination shall not relieve either Party of obligations incurred prior thereto.

12.7 Termination is not an exclusive remedy and the exercise by either Party will be without prejudice to any other remedies it may have under this EULA, by law, or otherwise.

### **13. Trial Period.**

13.1 Licensor offers a one-time testing of the Software ("**Trial Period**") with the following differences specified in Section 13.2 below.

13.2 If not otherwise agreed upon between the Parties: (i) the Trial Period shall last thirty (30) days after the use of the Software is enabled and (ii) both Parties may terminate the EULA immediately for convenience at any given time during the trial by giving written notice to the non-terminating Party. Additional terms for the Trial Periods of the different VMRay products are specified in the Software Specifications of ANNEX A.

13.3 At the expiration of the Trial Period, this EULA will terminate automatically unless Licensor has received a purchase order from Licensee.

### **14. Applicable Law; Place of Jurisdiction; Place of Performance.**

14.1 All claims under any theory of liability in any way to this EULA and all other claims or aspects whatsoever arising out of or in connection with this EULA shall be governed and construed in accordance with the laws of the State of New York, U.S., exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to its principles of conflicts of law. The venue for such claims that are not subject to arbitration shall be heard and determined in any federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan. The Parties hereby irrevocably submit to the exclusive jurisdiction of such courts (and, in the case of appeals, appropriate appellate courts therefrom) in any such action or proceeding and irrevocably waive the defenses of lack of personal jurisdiction or any inconvenient forum to the maintenance of any such action or proceeding.

14.2 Except for claims relating to intellectual property including without limitation trade secrets, which shall be subject to judicial determinations in accordance with Section 14.1, the Parties agree to submit any case or controversy arising out of or in connection with the provisions of this EULA to settlement proceedings under the ICC ADR Rules. If the dispute has not been settled pursuant to said rules within forty-five (45) days following the filing of a request for ADR or within such other period as the Parties may agree in writing, such dispute shall thereafter be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with said rules of arbitration. The venue for the proceedings in this Section 14.2 shall be New York, New York. The language to be used in the mediation and arbitration shall be English.

14.3 To the maximum extent permitted by applicable law, the place of performance is Licensor's registered business address by the time of performance.

### **15. Modifications to this EULA.**

15.1 This EULA may be amended: (i) by a written agreement duly executed by the Parties, or (ii) by digital consent in accordance with the following.

15.2 Licensor may request an amendment of this EULA at any time by sending an email to Licensee's contact person provided in Licensee's online account with Licensor. The request shall include: (i) a written proposed amendment titled "Proposed Amendment to the Current End-User License Agreement for VMRay Software", and (ii) a written statement that provides

the Licensee with an option to terminate this EULA with a pro-rata refund of any prepaid fees if the Licensee does not agree to the proposed amendment.

15.3 Licensor's amendment request shall also provide the following instructions:

"Please review this proposed amendment.

- If you agree with the proposed amendment, please reply by email that you consent and agree with its terms. Your email should also state the following: "I agree that my electronic signature indicates Licensee's intention to be legally bound by this consent and agreement."
- If you do not agree with the proposed amendment, please reply by email that you: (i) do not consent and agree with its terms, and (ii) you desire to terminate the EULA with a pro-rata refund of any prepaid fees, less any related taxes.
- Finally, you should conclude your email with your "electronic signature", which may be by any one of the following methods:
  - Your typewritten name preceded and followed by a /, such as /your name/
  - A scanned image of your actual handwritten signature; or
  - Your signature created by a software-based signing tool.
- Send your email reply to the sender of Licensor's amendment request. Upon receipt, Licensor shall confirm: (i) your acceptance of the amendment, or (ii) your option to terminate the EULA with a pro-rata refund of prepaid fees (if any)."
- IF YOU FAIL TO REPLY ANY AMENDMENT REQUEST WITHIN A PERIOD OF THIRTY (30) DAYS OF RECEIPT, YOU SHALL BE DEEMED TO HAVE AGREED TO THE PROPOSED AMENDMENT.

## 16. Miscellaneous.

16.1 All payments that Licensee makes shall be net of any applicable withholding tax and/or other similar levies (collectively "**Withholding Taxes**"). Any and all Withholding Taxes required by applicable law shall be paid by Licensee. Licensee shall render all reasonable assistance to Licensor in connection with such Withholding Taxes as is requested by Licensor (e.g. providing Licensor with all required documentation; completing and signing required forms or other documents; etc.). Licensee shall indemnify, keep indemnified and hold harmless, Licensor against all losses incurred or suffered by Licensor arising out of Licensee's: (i) failure to duly and timely provide assistance in accordance with this clause; (ii) failure to pay any tax to the applicable Tax Authorities or other authorities within the relevant period in accordance with this clause; (iii) non-compliance or delay with any other responsibilities in accordance with this Section 16.1.

16.2 Licensor and any of its directors, officers, employees, controlled or controlling entities, or sub-contractors shall not be liable for any default or delay in the performance of its obligations hereunder if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, pandemic, elements of nature or acts of God, fundamental technological changes to the underlying hardware or software, or any other similar cause beyond the reasonable control of Licensor. Licensor shall use its reasonable

efforts to minimize the duration and consequences of any delay or failure of performance resulting from a Force Majeure event.

16.3 Except as expressly stated otherwise herein: (i) there are no other agreements, understandings between the Parties, or obligations of Licensor related to the Software, and (ii) this EULA, including without limitation each ANNEX, provides the entire agreement of the Parties and supersedes any prior or present understanding or communications regarding its subject matter.

16.4 Written notices shall be deemed to have been received when personally delivered, when received by email transmission (with confirmation of receipt or follow up by another method of communication as provided in this Section), or two calendar days after being sent by a generally recognized overnight courier service. If a Party refuses to accept a notice or if a notice cannot be delivered because of a change in address for which no notice was given, then it is considered received when the notice is rejected or unable to be delivered.

16.5 If any provision of this EULA is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this EULA, and this EULA shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

16.6 Failure by either Party to insist on strict compliance with the terms and conditions of this EULA shall not be considered a waiver of such terms and conditions.

16.7 The titles and headings of the various sections and paragraphs in this EULA are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this EULA.

16.8 LICENSEE ACKNOWLEDGES THAT LICENSEE HAS READ THIS EULA AND UNDERSTANDS IT, AND THAT BY INSTALLING OR USING THE SOFTWARE LICENSEE AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

16.9 LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS SET ITS PRICES AND ENTERED INTO THIS EULA IN RELIANCE UPON THE DISCLAIMERS AND LIMITATIONS AS SET FORTH HEREIN AND THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

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## **ANNEX A: Software Specifications**

### **A.1 ] VMRay Analyzer.**

#### 1. Software Specifications

VMRay Analyzer is a security solution for analyzing and detecting potentially malicious data. To that end, Licensee can submit Samples through different interfaces, such as web UI, API or email. If the submitted Sample type is supported and a suitable configuration defined, an Analysis is performed and one or more Analysis Reports are generated.

#### 2. License Restrictions

Depending on the specific license, and if not otherwise agreed on, there may be restrictions on the

- maximum number of users ("**User Limit**"),
- maximum number of Analysis Jobs executed per day ("**Analyzer Quota**"), or
- availability of certain interfaces or advanced features.

Unused Analyzer Quota cannot be transferred to the next day. Please notice, that some of the less complex Analysis Jobs do not contribute to the Analyzer Quota. A detailed description of the Quota Management can be found in the documentation.

#### 2.1 Trial Phase

During the Trial phase Licensee is entitled to use the Software without any User Limit or Analyzer Quota.

#### 2.2 Term Phase

During the Term phase Licensee is entitled to use the Software with a User Limit and Analyzer Quota as specified in the invoice.

### **A.2.] VMRay Detector.**

#### 1. Software Specifications

VMRay Detector is an add-on to VMRay Analyzer for large volume use cases. In addition to the specifications described in Annex A.1, Samples can be submitted through a dedicated "**VMRay Detector API**". When this API is used, only Verdicts and no Analysis Reports are made accessible to the Licensee, and the Analysis contributes to a separate quota. However, the corresponding Analysis Reports may be retrieved subsequently on demand.

#### 2. License Restrictions

When using the VMRay Analyzer interfaces the license restrictions in Annex A.1 apply.

When using the VMRay Detector API, depending on the specific license, and if not otherwise agreed on, there is a separate quota for the maximum number of Analysis Jobs processed per day ("**Detector Quota**"). Unused Detector Quota cannot be transferred to the next day. Please notice, that some of the less complex Analysis Jobs do not contribute to the Detector Quota. A detailed description of the Quota Management can be found in the documentation.

#### 2.1 Trial License

During the Trial phase Licensee is entitled to use the Software with no User Limit, Analyzer Quota or Detector Quota.

## 2.2 Term Phase

During the Term phase Licensee is entitled to use the Software with a User Limit, Analyzer Quota, and Detector Quota as specified in the invoice.

### **A.3.] VMRay Email Threat Defender.**

#### 1. Software Specifications

VMRay Email Threat Defender is a security solution for analyzing and detecting potentially malicious content in emails. Licensee can integrate it into an email workflow to automatically perform an Analysis on incoming emails Samples to generate Verdicts. Depending on the outcome of such Analysis, various customizable actions can be defined and configured e.g., creating email or syslog notifications.

VMRAY EMAIL THREAT DEFENDER DOES NOT BLOCK OR DELAY THE DELIVERY OF AN EMAIL. SO, IF NOT COMBINED WITH OTHER PREVENTIVE MEASURES IN LICENSEE'S ENVIRONMENT, A MALICIOUS EMAIL CAN REACH THE RECIPIENT AND CAUSE DAMAGE BEFORE IT HAS BEEN ANALYZED.

#### 2. License Restrictions

Depending on the specific license, and if not otherwise agreed on, there may be restrictions on the maximum number of mailboxes ("**Mailbox Limit**"). For an already analyzed Sample, an existing Verdict may be reused instead of performing another Analysis. If desired, VMRay Email Threat Defender can be integrated with VMRay Analyzer to retrieve Analysis Reports for Verdicts being generated by VMRay Email Threat Defender. Each subsequently retrieved Analysis Report contributes to the Analyzer Quota of VMRay Analyzer as described in Annex A.1.

#### 2.1 Trial Phase

During the Trial phase Licensee is entitled to use the Software with a Mailbox Limit of 1000.

#### 2.2 Term Phase

During the Term phase Licensee is entitled to use the Software with a Mailbox Limit as specified in the invoice.

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## **ANNEX B: Service and Support Provision**

During the Term, either Licensor or a Reseller will provide service and support (herein collectively referred to as "**Support**") to Licensee.

All Resellers are obligated to fulfill certain Support quality standards of Licensor, but the concrete terms and conditions of a Support related agreement between Licensee and Reseller are subject to the negotiations between these parties.

Support by Licensee shall be a basic Support in accordance with the following additional terms and conditions ("**Service and Support Provisions**" or "**SaSP**"). The SaSP are hereby incorporated by reference into the EULA. Defined terms used herein but not otherwise defined herein shall have the meanings given such terms in the EULA. In the event of a conflict between these SaSP and the EULA, the EULA shall govern.

NONE OF THE SERVICE AND SUPPORT PROVISIONS SHALL OPERATE OR BE CONSTRUED AS A WAIVER OF ANY LIMITATION OF WARRANTY, LIMITATION ON REMEDIES, LIMITATION OF DAMAGES, LIMITATION OF LIABILITY OR ANY OTHER LIMITATION AS SET FORTH IN THE EULA IN FAVOUR OF THE LICENSOR.

### **1.0 Fees; Scope.**

- 1.1 a) During the Term of a valid Subscription License, Support will be free of charge.  
b) In case of a Perpetual License the Support will be free of charge for the first twelve (12) month of the Term with the option of a fee-based extension ("**Support Extension**"). Support will be discontinued if Licensee does not timely exercise the Support Extension and in this case Licensor is unable to provide for Updates, even if they are critical.
- 1.2 Support shall be provided, as follows:
  - Evaluating feature requests (Licensor will provide new features at its sole discretion).
  - Assisting Licensee in connection with the installation and configuration of the Software.
  - Verifying reproducible program errors in the Software ("**Error**").
  - Troubleshooting Errors by using reasonable efforts to provide solutions to Errors for which there are not existing known workarounds or patches.
- 1.3 Support will be provided in English or German language. Other languages may be offered at Licensor's sole discretion (additional fees may apply).
- 1.4 Unless expressly provided by mutual agreement between Licensor and Licensee, Support will be provided remotely from Licensor's premises only (no on-site Support at Licensee's premises).
- 1.5 Support will be provided during Licensor's normal business hours only (no weekends and no holidays).
- 1.6 Licensee agrees that Support may also be provided by qualified and duly authorized subcontractors of Licensor.



## **2.0 Exclusions.**

- 2.1 If the Software fails to analyze a specific malicious Sample, this failure will most likely not qualify as an Error, but as a natural consequence of utilizing automated Static and Dynamic Analysis for malware dissection.
- 2.2 No Support will be provided if the Error is caused by: (i) an unauthorized Software modification by Licensee; (ii) a misuse of the Software by Licensee; or (iii) an operation of the Software by Licensee which is not in accordance with the specifications found in ANNEX A.
- 2.3 Licensor's Support does not cover third party products.

## **3.0 Licensee's Responsibilities and Obligations.**

- 3.1 Licensee shall promptly notify Licensor if the operation of the Software does not conform to documentation provided by Licensor. Such notification shall contain:
  - A comprehensive description of the nature of the suspected Error; and
  - A detailed step-by-step description on how to reproduce the Error (e.g. relevant log file entries).
- 3.2 Licensee shall initiate a Support request via Licensor's customer support portal only, which is available at <https://support.vmray.com> or via email sent to [support@vmray.com](mailto:support@vmray.com) ("**Support Request**").
- 3.3 Licensee shall provide to Licensor the commercially reasonable assistance to assist Licensor with SaSP services.
- 3.4 Licensee shall promptly implement any and all: (i) Updates, (ii) error-fixes, and (iii) workarounds provided by Licensor. Support will only be provided for the most current version of the Software.
- 3.5 Licensee shall always and continuously backup all relevant data on systems that may be affected by the use of the Software.

## **4.0 Support-Procedure.**

- 4.1 In General: Upon receipt of a Support Request, Licensor shall use commercially reasonable efforts to analyze the problem and, if possible, confirm the existence of an Error.
- 4.2 In Detail: Based on the severity level of the reported Error, Licensor shall react as follows, but only if Licensee has fulfilled its obligations set out in Section 3 above:

### **Level 1: CRITICAL IMPACT**

- Definition: Software usage in its entirety is impossible AND there is a critical impact on Licensee's business (e.g. due to complete Software failure or direct security impact on the Software).
- Response time: A ticket shall be opened and a resource shall be assigned within two (2) business hours.
- Fix or workaround: one (1) business day.

**Level 2: MAJOR IMPACT**

- Definition: Due to the loss of essential Software functions, Software usage is severely restricted AND there is a major impact on Licensee's business (e.g. basic functions are not usable).
- Response time: A ticket shall be opened and a resource shall be assigned within one (1) business day.
- Fix or workaround: three (3) business days.

**Level 3: MINOR IMPACT**

- Definition: Due to the loss of non-essential Software functions, Software usage is limited AND there is a minor impact on Licensee's business.
- Response time: A ticket shall be opened and a resource shall be assigned within three (3) business days.
- Fix or workaround: Best efforts; on or before next release.

**Level 4: OTHER**

- Definition: NON-Software issues (e.g. documentation errors, feature requests)
- Response time: A ticket shall be opened and a resource assigned within five (5) business days.
- Fix or workaround: If Licensor at its sole option concludes that a solution is required, Licensor will inform Licensee of a scheduled date for such solution.

----- END OF EULA FOR VMRay Software -----