

## END-USER LICENSE AGREEMENT FOR VMRAY SOFTWARE VERSION 17

THIS END-USER LICENSE AGREEMENT (“**EULA**”) IS A LEGALLY BINDING CONTRACT BETWEEN LICENSEE AND LICENSOR (COLLECTIVELY “**PARTIES**” OR INDIVIDUALLY A “**PARTY**”). IT COVERS THE TERMS AND CONDITIONS FOR THE LICENSEE’S USE OF VMRAY SOFTWARE AND SERVICES. LICENSOR OBJECTS TO ANY ALTERNATIVE OR ADDITIONAL TERMS OR CONDITIONS PROPOSED BY LICENSEE IN ANY LICENSEE-ISSUED DOCUMENT (SUCH AS AN ORDER), INCLUDING ANY TERMS THAT ARE IN CONFLICT WITH LICENSOR’S, EXCEPT WHERE AN INDIVIDUAL, SIGNATURE-BEARING CONTRACT HAS BEEN CONCLUDED WITH LICENSOR AS THE GOVERNING AGREEMENT. ANY INVOICE RELATING TO THIS EULA IS DEEMED TO BE PART OF THIS EULA AND IS HEREBY INCORPORATED BY REFERENCE. IN CASE LICENSEE RECEIVES THE SOFTWARE THROUGH A RESELLER, ALL FEES AND OTHER PROCUREMENT AND DELIVERY TERMS WILL BE AGREED BETWEEN LICENSEE AND RESELLER; HOWEVER, THE TERMS SET FORTH IN THIS EULA REGARDING LICENSEE’S USE OF THE SOFTWARE REMAIN APPLICABLE. LICENSEE’S AGREEMENT WITH THE RESELLER IS BETWEEN LICENSEE AND THE RESELLER ONLY AND SUCH AGREEMENT IS NOT BINDING ON LICENSOR OR USE OF THE SOFTWARE. THE SOFTWARE IS NOT AVAILABLE FOR PERSONAL, HOME, AND/OR CONSUMER USE.

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. ONCE THE SOFTWARE HAS BEEN INSTALLED, THE PROVISIONS OF THIS EULA APPLY, EVEN IF THE SOFTWARE IS SUBSEQUENTLY DELETED OR RETURNED. ANY USE OR INSTALLATION OF THE SOFTWARE BY LICENSEE SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THIS EULA.

### **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. Upon request, each Party agrees to confirm in writing to the other Party, the status of any or all Affiliates.

**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 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.

**Authorized User:** Employee, agent or independent contractor of Licensee or its Affiliates (i) who is identified by Licensee, and/or (ii) who the Software can identify.

**Confidential Information:** Any information, maintained in confidence by the disclosing Party, 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.

**Data Processing Agreement (“DPA”):** Licensor’s “Data Processing Agreement (OnPrem)” available in its current version at <https://vmray-legal.com>.

**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.

**External Use:** Any access to or use of the Software by Authorized Users or a Third Party, which is not Internal Use as defined in Section 1.1. By way of example and not limitation, External Use includes any access or use, whether commercial or non-commercial: (i) by or for the benefit of any Third Party, or (ii) in any event, for the development of any product or service (e.g. managed security, cybersecurity consultancy, threat intelligence feed etc.) to be provided to a Third Party.

**GDPR:** the European Union General Data Protection Regulation which is only applicable to personal data that is subject to, regulated by, and protected under the GDPR and shall also include additional laws, rules, and regulations now or hereafter promulgated by the EU, any Member State, or other governmental authority under or supplemental to the GDPR, as the same may be amended, supplemented, or replaced from time to time.

**GDPR Data:** ‘personal data’ under the GDPR (as defined in its Art. 4) that is made available or supplied by Licensee to Licensor pursuant to this EULA, if and only to the extent that the GDPR applies with respect to the processing of such personal data.

**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.

**Hazardous Environment:** An Environment 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, property damage or environmental damage.

**Licensee:** The entity concluding 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, 44799 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.

**Order:** (i) a purchase order or other ordering document issued by Licensee in response to a Quote; or (ii) a Licensee-initiated procurement document, in each instance placed by Licensee (with a Reseller or Licensor, as the case may be) for the procurement of the Service to be supplied only in accordance with and subject to the provisions of this EULA.

**Quota:** The number of Analysis Jobs, mailboxes, other measure, and/or other measuring mechanism for each Software purchased under this EULA as set forth in an invoice.

**Quote:** One or more documents issued by Licensor or a Reseller (as the case may be) to Licensee specifying the Software, the related pricing, payment terms, and offered Quota as well as sufficient other information to complete the transaction.

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

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

**Reseller:** A reseller or other partner that is authorized by Licensor or its distributor to secure orders for the sale of VMRay products and services to customers.

**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).

**Sanctions and Export Control Laws:** Any law, regulation, statute, prohibition, or similar measure applicable to the Software and/or to either party relating to the adoption, application, implementation and enforcement of economic sanctions, export controls, trade embargoes or any other restrictive measures, including, but not limited to, those administered and enforced by the European Union, the United Kingdom, and the U.S., each of which shall be considered applicable to the Software.

**Site:** A single geographic location where the main component of the Software (“**VMRay Server**”) is installed and operated in production.

**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.

**Third Party:** Any person or entity other than the Licensee or an Authorized User.

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

**Verdict:** High-level classification information about a Sample’s grade of maliciousness, usually represented as textual descriptions (e.g. “malicious” or “suspicious” or “clean”) and/or numeric values (e.g. a number between 0 and 100). For the sake of clarity: Verdict does not contain any data provided by Licensee, and it is technically impossible to reconstruct from it any such data.

**VMRay Competitor:** A person or entity in the business of developing, distributing or commercializing IT security products or services substantially similar to or competitive with Licensor’s products or services.

## 1. Rights and Restrictions.

1.1 Subject to the terms and conditions of this Agreement, Licensor grants Licensee a non-exclusive, non-sublicensable, non-transferable, and non-assignable license to use the Software, during the Term and in accordance with the applicable documentation, for Licensee's internal information security purposes ("**Internal Use**"). Licensee's Internal Use shall include: (a) Licensee (i) sharing results of Analyses with Affiliates or (ii) permitting Affiliates to trigger Analyses and receive results through a VMRay offered feature like e.g. IR Mailbox (both "**Indirect Affiliate Use**"), and/or (b) Licensee permitting Affiliates a direct access and use the Software via the API or web interface ("**Direct Affiliate Use**"), but only provided that Licensee shall (i) provide prior written notice to Licensor, (ii) ensure that its Affiliates are aware of and comply with the terms and conditions of this EULA, and (iii) be responsible for, and hold Licensor harmless from, the acts and omissions of its Affiliates relating to such Direct Affiliate Use. For the avoidance of doubt, the Affiliate is not a separate or additional licensee, or otherwise having any rights or deemed to be a third-party beneficiary hereunder in any event or circumstance, and since all Support is to be provided only to Licensee, no Affiliate will be entitled to request or receive Support directly from 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 Third Party.

1.3 The Software may not be available: if (i) the subscription period has expired, (ii) Licensee fails to pay fees as required, or (iii) Licensee is in material breach of this EULA in any other manner and has failed to cure such violation after respective request.

1.4 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 (Limited Warranties and Exclusive Remedies), Section 8 (Indemnification) and Section 9 (Liability), Licensee hereby expressly waives all rights regarding any and all such claims.

1.5 Licensee is not permitted under this EULA to do or attempt any of the following:

- a) use the Software other than for its intended purpose of improving security and protecting computing infrastructure, in particular not (i) in any way or in connection with any purpose or activity that is unlawful, illegal, fraudulent or harmful, (ii) for the purpose of competing with Licensor in any manner, or (iii) in a Hazardous Environment,
- b) modify, enhance, disassemble, reverse compile, or reverse engineer the Software,
- c) sell, lend, assign, lease, or transfer this EULA, the related license, or any copy of the Software, or install and operate the VMRay Server in production at more than one Site,
- d) publish or otherwise make available to any third party, any benchmark tests or performance analysis relating to the Service without the express written permission of Licensor which may be withheld or conditioned at Licensor's sole discretion,
- e) create any derivative works or other works that are based upon or derived from the Software in whole or in part, unless such works are only created for and utilized in Internal Use, or
- f) circumvent the Internal Use restriction; prohibited circumventions of the Internal Use restriction include but are not limited to providing: (i) a mechanism enabling third parties to submit Samples, (ii) Analysis Reports and Verdicts created by the Software to Third Parties, or (iii) services or products to Third Parties, where malware detection or analysis capabilities are built in whole or in part on the Software.

Any behavior in violation of this provision is not allowed and Licensor may terminate the license, in addition to any other remedies and damages allowed by law and with no refund of any fees paid.

1.6 If Licensee plans to use the Software and/or its results as part of an External Use case or becomes aware that such External Use is already performed, Licensee shall promptly inform Licensor and discontinue until the Parties have closed separate agreement or addendum to this EULA governing such External Use.

1.7 Licensee acknowledges that 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.

1.8 Licensee understands and agrees that the success of its security efforts are dependent on a number of factors solely under Licensee's control and responsibility

## **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 Any collection and processing of any GDPR Data, which may take place during the Software use, if and to the extent Licensor acts as a 'processor' or 'sub-processor' (as defined in the GDPR) for Licensee of GDPR Data, is covered by the DPA or an individual data processing agreement negotiated between the Parties, both hereby incorporated into this EULA by reference.

3.3 Licensee acknowledges and agrees that the use of the Software involves a necessary data transfer between the Affiliates VMRay GmbH and VMRay, Inc. Any transfer of personal data between these Affiliates takes place based on a data processing agreement in compliance with the provisions of the GDPR. In case there is a transfer of any personal data from VMRay

GmbH to VMRay Inc., such transfer is additionally protected by an Agreement on the Standard Contractual Clauses ("**EU Model Clauses**").

3.4 In accordance with Section 3.1 the Software will collect information which is required to verify that the Licensee is using the Software in compliance with the license and to process actually used Quota ("**License Monitoring**"). The Software may collect and utilize further 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. Such Usage Statistics are only transferred if an internet connection is established, and Licensee has not deactivated this feature. For clarification, neither License Monitoring nor Usage Statistics include Samples, Analysis Reports and/or personal data. Nothing in this Section shall permit Licensor to provide any information included in License Monitoring or Usage Statistics to any third party other than as expressly permitted by this EULA.

3.5 To enhance reaction time and accuracy, the Software is able to utilize Reputation Analyses and integrate their results into Analysis Reports and Verdicts. Reputation Analysis is activated by default. If not deactivated by Licensee, Reputation Data may be transferred to external Reputation Analysis service providers of VMRay GmbH ("**VMRay RASPs** ") and/or of Licensee ("**Licensee RASPs**"). VMRay RASPs located outside of Germany and/or the U.S. are bound by a data processing agreement 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 RASPs the Reputation Analysis is always originating from VMRay GmbH's server and thus the identity of the Licensee is not disclosed. When utilizing Licensee RASPs, the Software may transfer Reputation Data directly to the activated Licensee RASPs under Licensee's own responsibility.

3.6 The Software is able to integrate certain program features performed by additional external service providers of Licensee. If activated 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.

3.7 All data transfers under Licensor's responsibility will be compliant with applicable law and 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.

3.8 Nothing in this EULA shall grant Licensee the right to inspect Licensor's premises, Software or related data systems.

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

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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 without the need to post bond.

4.7 In case the Parties hereto have previously entered into a non-disclosure or confidentiality agreement that is still in effect on the date this EULA is agreed on, then the Parties hereto agree that such prior agreement is hereby merged into and superseded by this EULA with respect to the subject matter hereof and the transactions undertaken pursuant hereto.

## **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. Notwithstanding the foregoing, nothing shall prohibit Licensee from making disclosures required by law.

## **6. Limited Warranties and Exclusive Remedy.**

6.1 Licensor warrants to Licensee that (i) the Software itself contains no malware (for the avoidance of doubt: this does not refer to malware contained in a Sample and analyzed by the Software), (ii) the Software will operate substantially in accordance with the specifications in ANNEX A ("Software Specifications") under normal use and circumstances until the expiration or termination of Licensee's license right, (iii) Licensor will provide service and support as set forth in Annex B ("Service and Support Provisions"), and (iv) Licensor will perform its obligations under this EULA with reasonable care and expertise.

6.2 The foregoing limited warranty does not cover events or circumstances caused by accident, abuse or use of Software in a manner inconsistent with this EULA, or other guidance provided by Licensor, or resulting from events of a Force Majeure Event (as defined in Section 16.2). If it is established that Licensor has breached the above warranty after notice from Licensee as required below, Licensor may, at its option: (i) use reasonable efforts to cure the breach; or (ii) in the event Licensor cannot, after commercially practicable attempts to do so, achieve the remedy in (i) immediately above, either Licensor or Licensee may terminate this EULA and Licensor will provide a refund (within thirty (30) days) of unused fees pre-paid by Licensee, if any, as of the effective date of such termination.

6.3 To benefit from this warranty and the remedies stated herein, Licensee must report in writing to Licensor, the alleged breach of warranty with reasonable specificity within ten (10) days of its occurrence. The above remedies for breach of the foregoing warranty are Licensor's sole and exclusive obligation and liability to Licensee and Licensee's sole and exclusive right and remedy for Licensor's breach of the foregoing warranty notwithstanding any other provision of this EULA to the contrary.

## **7. Disclaimers.**

7.1 EXCEPT AS SET FORTH IN SECTION 6, THE SOFTWARE IS PROVIDED "AS IS, WITH ALL FAULTS" AND "AS AVAILABLE" AND WITHOUT ANY OTHER WARRANTY, CONDITION, UNDERTAKING, OR GUARANTEE OF ANY KIND OR NATURE. LICENSOR (ON BEHALF OF ITSELF AND ITS AFFILIATES) EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, GUARANTEES, CONDITIONS, UNDERTAKINGS, OR WARRANTIES OF ANY KIND (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) ARISING FROM OR RELATED TO A STATUTE, CIVIL/COMMERCIAL CODE, CUSTOM, USAGE OR TRADE PRACTICE, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AND/OR CONDITION OF: MERCHANTABILITY; FITNESS FOR A PARTICULAR (SUCH AS A HAZARDOUS ENVIRONMENT) OR GENERAL PURPOSE; TITLE; SATISFACTORY QUALITY; ACCURACY; NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR ABILITY TO ACHIEVE A PARTICULAR RESULT.

7.2 THE SOFTWARE UTILIZES DYNAMIC ANALYSIS TO OBSERVE THE BEHAVIOR OF SAMPLES AND IDENTIFY SUSPICIOUS AND MALICIOUS ACTIVITY. TO ACHIEVE THE BEST POSSIBLE RESULTS, THE SERVICE DOES NOT SUPPRESS, BLOCK OR WEAKEN EVERY SUCH ACTION, INCLUDING WITHOUT LIMITATION, ANY POSSIBLY MALICIOUS OR DESTRUCTIVE EFFECTS. FURTHER, LICENSOR DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT: (A) USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE OR ITS FUNCTIONS AND FEATURES WILL MEET ANY SECURITY OR OTHER NEEDS OR REQUIREMENTS (SUCH AS USE IN A HAZARDOUS ENVIRONMENT) OF LICENSEE; (C) USE OF THE SOFTWARE ALONE WILL FULLY PROTECT LICENSEE'S SYSTEMS, NETWORKS, DEVICES,



ASSETS, INFORMATION, AND/OR DATA FROM AND AGAINST ANY OR ALL MALWARE OR OTHER POSSIBLE RISKS; (D) ANALYSIS REPORTS AND VERDICTS WILL BE ERROR-FREE (E.G. BENIGN SAMPLES MAY BE INCORRECTLY MARKED AS MALICIOUS AND/OR MALICIOUS SAMPLES INCORRECTLY MARKED AS NOT MALICIOUS) OR THAT THE SOFTWARE WILL DETECT, IDENTIFY, WEAKEN OR REMEDIATE ALL MALICIOUS AND POTENTIALLY HARMFUL ACTIVITIES OF AN ANALYZED MALWARE AND ALL VULNERABILITES KNOWN OR UNKNOWN AT THE TIME; OR (E) THE SOFTWARE WILL OPERATE IN COMBINATION WITH HARDWARE, OTHER SOFTWARE, SYSTEMS, CLOUD SERVICES, OR DATA NOT PROVIDED OR REQUIRED BY LICENSOR.

## **8. Intellectual Property Indemnity.**

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: (i) procure for Licensee the right to continue to use the Software; (ii) repair, modify or replace the Software so that it is no longer infringing; or (iii) 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 (vii) 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.

## **9. Liability.**

9.1 **Exclusions from Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS EULA, LICENSOR AND ITS AFFILIATES SHALL NOT BE LIABLE TO LICENSEE OR ITS AFFILIATES OR CONTRACTORS UNDER THIS EULA OR IN CONNECTION HEREWITH FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM OR RELATED TO: (I) LOSS OF USE OF ANY NETWORKS, SYSTEMS, SOFTWARE, HARDWARE, COMPUTERS, OR

DEVICES; (II) LOSS OR CORRUPTION OF DATA; (III) LOST PROFITS OR REVENUE; (IV) PROCUREMENT OF SUBSTITUTE GOODS, SOFTWARE OR SERVICES; (V) LOSS OF BUSINESS, GOODWILL, OPPORTUNITY, REVENUE OR SAVINGS; OR (VI) OTHERWISE FOR ANY INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO THIS EULA, LICENSOR'S OR ITS AFFILIATES' PERFORMANCE HEREUNDER, OR ANY PRODUCT, UPDATES, AND/OR MAINTENANCE, WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS EULA FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF LICENSOR AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES.

IF LICENSEE IS IN THE EUROPEAN ECONOMIC AREA, REFERENCES TO "INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES" SHALL ALSO MEAN ANY LOSSES OR DAMAGES WHICH: (A) WERE NOT REASONABLY FORESEEABLE BY BOTH PARTIES; (B) WERE KNOWN TO LICENSEE BUT NOT TO LICENSOR; AND/OR (C) WERE REASONABLY FORESEEABLE BY BOTH PARTIES BUT COULD HAVE BEEN PREVENTED BY LICENSEE SUCH AS, FOR EXAMPLE, LOSSES CAUSED BY VIRUSES, MALWARE, OR OTHER MALICIOUS PROGRAMS, OR LOSS OF OR DAMAGE TO LICENSEE DATA.

**9.2 Maximum Liability – Direct Damages.** IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS EULA EXCEED THE TOTAL AMOUNT OF LICENSEE FEES ACTUALLY RECEIVED BY LICENSOR FOR THE SOFTWARE OVER THE ONE YEAR PERIOD PRIOR TO THE EVENT OUT OF WHICH THE CLAIM AROSE.

**9.3 Exceptions; Unenforceability; Basis of Bargain.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION 9 TO THE CONTRARY, LICENSOR'S LIABILITY SHALL NOT BE LIMITED UNDER THIS SECTION 9 IN THE EVENT OR CIRCUMSTANCE OF: (A) BREACH OF LICENSOR'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 4; OR (B) PAYMENT OF MONIES BY LICENSOR UNDER ANY INDEMNITY UNDER SECTION 8.

THE DISCLAIMERS, LIMITATIONS, AND EXCLUSIONS CONTAINED HEREIN THIS SECTION 9 SHALL APPLY TO THE MAXIMUM EXTENT PERMISSIBLE BY WRITTEN WAIVER, DISCLAIMER, LIMITATION, AND/OR EXCLUSION UNDER THE GOVERNING LAW, REGARDLESS OF WHETHER OR NOT LICENSOR, ITS AFFILIATES, LICENSORS, SUPPLIERS, AND/OR RESELLERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EACH PARTY RECOGNIZES AND AGREES THAT THE WAIVERS, WARRANTY LIMITATIONS, AS WELL AS DISCLAIMERS AND EXCLUSIONS FROM AND LIMITATIONS OF LIABILITY AND/OR REMEDIES IN THIS EULA ARE A MATERIAL AND ESSENTIAL BASIS OF THIS EULA; REFLECT A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES; ARE FAIR, REASONABLE, AND A FUNDAMENTAL PART OF THIS EULA; AND EACH HAS BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS EULA AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS EULA. THE PARTIES ACKNOWLEDGE AND AGREE THAT ABSENT ANY OF SUCH WAIVERS, DISCLAIMERS, EXCLUSIONS, AND/OR LIMITATIONS OF LIABILITY/REMEDIES, THE PROVISIONS OF THIS EULA, INCLUDING THE ECONOMIC TERMS, WOULD BE SUBSTANTIALLY DIFFERENT, OR IN THE ALTERNATIVE, THIS EULA WOULD NOT HAVE BEEN CONSUMMATED.

## **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 the regular term ("**Term**") of this EULA shall be a subscription period as defined in the invoice.

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 specified in the invoice issued to Licensee. 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.

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.**

Licensor offers a one-time testing of the Software (“**Trial**”) with the following differences: If not otherwise agreed upon between the Parties (i) the Trial shall last thirty (14) days after the use of the Software is activated (“**Trial Period**”), and (ii) both Parties may terminate the EULA immediately for convenience at any given time during the trial by giving written notice. At the expiration of the Trial Period, this EULA will terminate automatically unless Licensor has received an Order.

### **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 Commonwealth of Massachusetts, 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 shall be in any federal court located in the Southern District of the State of Boston, Massachusetts. 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 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 by a written agreement duly executed by the Parties.

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

## 16. Miscellaneous.

16.1 Licensee shall pay all taxes that are imposed due to the execution or performance of this EULA, or where appropriate, Licensee shall reimburse amounts Licensor paid on Licensee's behalf. This includes all taxes arising from use of the Software.

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 (each, a "**Force Majeure Event**"). 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 This EULA may not be assigned by either Party without the prior written consent of the other Party; provided that either Party may assign this EULA and/or any of its rights or obligations under this EULA to an Affiliate of the assigning Party or in connection with a merger, consolidation, or the sale of all or substantially all its assets or stock, without the prior written consent of the other Party but with prior notice. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this EULA, Licensor may terminate this EULA without further obligation to Licensee (including any obligation to provide a refund) in the event that (i) Licensee assigns this EULA or its rights under this EULA to a VMRay Competitor or (ii) Licensee is acquired by a VMRay Competitor.

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## **ANNEX A: Software Specifications**

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

**Product:** 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 user interface, API or email. If the submitted Sample type is supported and a suitable configuration defined, Analyses are performed according to the configuration and one or more Verdicts and Analysis Reports are generated.

**Quota Limits and Management:** Depending on the specific license, and if not otherwise agreed on, there may be restrictions on the maximum number of (a) Authorized Users ("**User Limit**"), (b) Analysis Jobs executed in parallel ("**Job Limit**") (c) Analysis Jobs executed per month providing (i) a Verdict ("**Verdict Quota**"), or (ii) an Analysis Report ("**Report Quota**"), and d) availability of certain interfaces or advanced features. Licensee can configure upon submission, whether he will access both Verdict and Analysis Report or just the Verdict and whether executed Analysis Jobs will consume Verdict or Analysis Report Quota. Unused Quota cannot be transferred to the next month. A detailed description of the Quota Management can be found in the documentation. The Parties may agree, in writing on the activation of a feature ("**Pay Per Use Option**") that allows Licensee the flexibility to go beyond Licensee's initially purchased Quota and pay fees for further Analysis Jobs on a pay per use basis.

### **A.2. VMRay Email Threat Defender ("ETD")**

**Product:** VMRay ETD 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 emails. Depending on the outcome of such Analysis and the configuration settings in VMRay ETD, various actions can be triggered, such as notifications, quarantine, and others.

**Quota Limits and Management:** Depending on the specific license, and if not otherwise agreed on, there may be restrictions on the maximum number (i) of mailboxes ("**Mailbox Limit**") and (ii) Analysis Jobs executed in parallel ("**Job Limit**"). For an already analyzed Sample, an existing Verdict may be reused instead of performing another Analysis. If desired, VMRay ETD can be integrated with VMRay Analyzer to retrieve Analysis Reports for Samples scanned by VMRay ETD. Each subsequently retrieved Analysis Report contributes to the Quota of VMRay Analyzer as described in Annex A.1. Regarding the Pay Per Use Option see A. 1

**Product Specific Disclaimer (in addition to Section 7):** LICENSOR DOES NOT WARRANT THAT: (A) ANY EMAIL WITHIN AN INTENDED EMAIL BLOCKING WILL BE BLOCKED ACCURATELY, (B) NO EMAIL WILL BE LOST, OR (C) LEGITIMATE EMAIL WILL NOT BE OCCASIONALLY QUARANTINED. 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. LICENSEE IS SOLELY RESPONSIBLE TO ENSURE THAT THE TRANSFER OF ANY PERSONAL DATA TO LICENSOR, IN PARTICULAR PERSONAL DATA OF LICENSEE'S EMPLOYEES, TAKES PLACE IN ACCORDANCE WITH APPLICABLE DATA PROTECTION LAWS, E.G. IN SOME JURISDICTIONS VMRAY ETD MAY ONLY BE USED BY LICENSEES THAT PROHIBIT THEIR EMPLOYEES ANY USE OF THEIR WORK EMAIL INBOX FOR PRIVATE PURPOSES.

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

During the Term, Licensor will provide basic support ("**Support**") to Licensee.

In case Licensee has a support related agreement with a Reseller the concrete terms and conditions of such support are subject to such agreement, and Licensor shall not be obligated to provide support obligations other than those provided herein.

Support by Licensee shall be a basic Support in accordance with the following additional terms and conditions ("**Support Provisions**"), which 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 Support Provisions 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. Fees; Scope.**

1.1 Support shall include the following:

- 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.

1.2 Support will be provided in English or German language. Other languages may be offered at Licensor's sole discretion (additional fees may apply).

1.3 Unless expressly provided by mutual agreement between Licensee and Licensor, Support will be provided remotely from Licensor's premises only (i.e., no on-site Support at Licensee's premises).

1.4 Support will be provided during Licensor's normal business hours only (i.e., no weekends and no holidays).

1.5 Licensee agrees that Support may also be provided by qualified and duly authorized subcontractors of Licensor.

### **2. Exclusions.**

2.1 If the Software fails to analyze a specific malicious Sample, this failure will most likely not qualify as an Error.

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.

2.4 Except for the Support mentioned above, the terms of this ANNEX B and the EULA do not require Licensor to provide Licensee with any configuration, deployment, training, consulting services, or other technical assistance of any kind.

### **3. 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 request for Support 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 commercially reasonable assistance to assist Licensor.
- 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. Support-Procedure.**

- 4.1 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 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: on or before next release and upon decision of Licensor.

#### **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.