END-USER LICENSE AGREEMENT
FOR VMRAY SOFTWARE
VERSION 15

IMPORTANT – READ CAREFULLY: THIS END-USER LICENSE AGREEMENT (“EULA” OR “AGREEMENT”) IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AS A COMPANY OR A LEGAL ENTITY (THE “LICENSEE” OR “YOU”) AND THE COMPANY (THE “LICENSOR”) ISSUING THE INVOICE WHICH RELATES TO THIS AGREEMENT AND WHICH IS DEEMED TO BE PART OF THIS AGREEMENT AND WHICH IS HEREBY INCORPORATED INTO THIS EULA BY REFERENCE (“INVOICE”). THIS AGREEMENT COVERS THE TERMS AND CONDITIONS FOR THE LICENSEE’S TECHNICAL POSSIBILITY TO USE VMRAY (AS DEFINED BELOW) MALWARE ANALYSIS SOFTWARE AS INDICATED IN THE INVOICE AND ALL ITS ACCOMPANIED COMPONENTS (EXECUTABLES, DOCUMENTATION, AND ALL OTHER FILES PROVIDED) (COLLECTIVELY “SOFTWARE”). VMRAY (“VMRAY”) IS A LEGAL ENTITY REFERRED TO IN THE INVOICE.

YOU CONSENT AND ACCEPT THAT THIS EULA IS AN AGREEMENT BETWEEN YOU AND THE LICENSOR AND THAT, UNLESS VMRAY IS YOUR LICENSOR, (I) ALL OF VMRAY’S OBLIGATIONS, COMMITMENTS, OR SUCHLIKE UNDER THIS AGREEMENT ARE PERFORMED ON BEHALF OF THE LICENSOR AS YOUR CONTRACTING PARTY ONLY; (II) NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO CREATE OR IMPLY ANY OBLIGATIONS, COMMITMENTS, OR SUCHLIKE, BE THEY CONTRACTUAL OR OTHERWISE, OF VMRAY DIRECTLY TOWARDS YOU.

AS LONG AS THERE IS NO SEPARATE AGREEMENT, THIS AGREEMENT ALSO GOVERNS YOUR USE OF ANY UPGRADES, UPDATES, PATCHES, AND HOTFIXES OF THE SOFTWARE THAT REPLACE OR SUPPLEMENT THE ORIGINAL SOFTWARE (COLLECTIVELY “UPDATES”), AND SUCH UPDATES WILL BE CONSIDERED SOFTWARE FOR ALL PURPOSES OF THIS EULA.

NOTE: LICENSOR DOES NOT LICENSE THE SOFTWARE TO INDIVIDUALS.

IF YOU DO NOT AGREE TO BE BOUND BY THIS EULA, OR IF YOU ARE AN INDIVIDUAL, DO NOT DOWNLOAD THE SOFTWARE OR, IF THE SOFTWARE HAS BEEN DELIVERED ON ELECTRONIC STORAGE MEDIA, DESTROY SUCH ELECTRONIC STORAGE MEDIA OR 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 AGREEMENT.

WARNING - READ CAREFULLY: THE PURPOSE OF THE SOFTWARE IS TO ANALYZE UNKNOWN - AND MOST PROBABLY MALICIOUS - COMPUTER FILES. TO THIS END, THESE FILES ARE EXECUTED INSIDE A VIRTUAL MACHINE AND ARE ALLOWED TO WORK UNDISTURBED. FOR CORRECT AND SOUND ANALYSIS RESULTS IT IS NECESSARY TO RECOGNIZE ALL POSSIBLE FUNCTIONALITY THAT IS CONTAINED IN THE ANALYZED FILES. HENCE, NO EFFORTS ARE TAKEN BY THE SOFTWARE TO SUPPRESS, BLOCK OR WEAKEN THE EFFECTS OF THE OPERATIONS PERFORMED BY THE ANALYZED COMPUTER FILE. QUITE CONTRARY, MALICIOUS AND DESTRUCTIVE EFFECTS ARE EXPLICITLY ADMITTED AND EXPECTED! IT IS THE LICENSEE’S SOLE RESPONSIBLE AND DUTY TO ASSURE, TAKE CARE, AND GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER. IF YOU CANNOT OR WILL NOT
GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER, DO NOT USE THE SOFTWARE.

1. License and Support:

1.1 Subject to the terms hereof, the SOFTWARE is provided on a temporary-use, non-exclusive, non-assignable, and non-transferable basis, and may not be copied (except for back-up or disaster recovery purposes), modified, or enhanced without the advance written authorization of VMRAY. The LICENSEE may make one or more copies for back-up or disaster recovery purposes, provided that the LICENSEE agrees to not grant access to such copies to any other individual, company or entity.

1.2.1 This EULA permits the LICENSEE to use the SOFTWARE solely at its site. Depending on the license type YOU chose to acquire, YOU are entitled to use the SOFTWARE as follows:

- Volume License: If not otherwise agreed upon, YOU are entitled to use one installation of the SOFTWARE to generate (i) a maximum number of analyses and (ii) a maximum number of (a) analysis results, and / or (b) judgments based on the analysis result (“VERDICTS”) (“(a)” and “(b)” collectively “FINDINGS”), all of which are specified in the INVOICE issued to the LICENSEE prior to the intended start of a TERM. Maximum number (“MAXIMUM NUMBER”) in this sense is the number of FINDINGS per time segment, where time segments are a day, a month, and year (“TIME SEGMENTS”). The TRIAL PERIOD entitles the LICENSEE to use the SOFTWARE for a minimum of 500 (five hundred) FINDINGS per day. Unused FINDINGS are not transferable to following TIME SEGMENTS.

- Site License: If not otherwise agreed upon, YOU are entitled to use unlimited installations of the SOFTWARE to generate an unlimited number of analyses, provided that unitarily all SOFTWARE installations (i) are used at the same site, (ii) use the same SOFTWARE Backend-Server, (iii) and have access to that one single SOFTWARE Backend-Sever only.

- Volume License and Site License: If not otherwise agreed upon, YOU are entitled to use the SOFTWARE to generate a maximum number of reputation assessments per TIME SEGMENT (“TS REPUTATION ASSESSMENTS”). If not otherwise agreed upon, TIME SEGMENTS and TS REPUTATION ASSESSMENTS are specified in the INVOICE issued to the LICENSEE prior to the intended start of a TERM. The TRIAL PERIOD entitles the LICENSEE to use the SOFTWARE for 10,000 (ten thousand) TS REPUTATION ASSESSMENTS per day. Unused TS REPUTATION ASSESSMENTS are not transferable to following TIME SEGMENTS.

1.2.2 The SOFTWARE may only be used (i) during the agreed license period as defined below (see Section 10), and (ii) for a maximum number of users and / or email accounts as specified in the INVOICE.

1.2.3 Detailed specifications of the SOFTWARE and the respective license types are defined in Annex A (“ANNEX A”), hereby incorporated into this EULA by reference.

1.2.4 The LICENSEE acknowledges that the SOFTWARE may contain technical functionality to stop operations (i) after the license period has expired, (ii) for users exceeding the maximum number of users, (iii) if the LICENSEE fails to pay due fees, or (iv) if the LICENSEE violates this EULA in any other way.

1.3 The SOFTWARE may only be used for its intended purpose of analyzing malware and other threats with the goal of improving security and protecting computing infrastructure.

1.4 The SOFTWARE may not be used (i) in any way that is unlawful, illegal, fraudulent or harmful; or (ii) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

1.5 The LICENSEE is obliged to promptly install all UPDATES released by VMRAY.
1.6 During the continuance of this EULA, VMRAY will provide service and support as set forth in Annex B (“ANNEX B” and/or “SERVICE AND SUPPORT PROVISIONS”), hereby incorporated into this EULA by reference. Unless otherwise explicitly specified in this EULA, if the terms and conditions of this EULA conflict with any terms and conditions contained in ANNEX B (SERVICE AND SUPPORT PROVISIONS), the terms and conditions of this EULA shall govern.

2. Copyright and Open Source:

2.1 The SOFTWARE under this AGREEMENT is exclusive property of VMRAY. VMRAY owns the title, copyright, and other intellectual property rights in the SOFTWARE, which is protected by copyright and other intellectual property laws and treaties. This AGREEMENT does not grant the LICENSEE any ownership right or title to, or interest in the SOFTWARE, or any part thereof. VMRAY retains all such rights, title, and interest. The SOFTWARE is licensed, not sold.

2.2 The LICENSEE agrees to not alter or delete any copyright notice contained in the SOFTWARE.

2.3 The SOFTWARE may contain Open Source components, which, in addition to these terms, are subject to and governed by the particular license terms and conditions of these components. A list of applicable Open Source components is available via the SOFTWARE’s user interface.

2.4 The LICENSEE agrees (i) not to modify, disassemble, reverse compile, or reverse engineer the SOFTWARE, (ii) not to create any derivative works or other works that are based upon or derived from the SOFTWARE in whole or in part, and (iii) not to attempt to do any of the foregoing, except, and only to the limited extent, that any of the forgoing is expressly permitted by applicable law.

3. Trade Secrets; Data protection; Freedom of Use of Usage Data:

3.1 The SOFTWARE includes significant elements, including its algorithms, logic, know-how, techniques, ideas, and design that VMRAY has maintained as confidential information, which constitute trade secrets of VMRAY, and may be protected under copyright and other intellectual property laws and treaties. The LICENSEE shall not disclose any of this proprietary information to third parties during and after the duration of this AGREEMENT.

3.2 LICENSOR and VMRAY store all data that is necessary for the purposes of this EULA. Except as provided otherwise herein LICENSOR and VMRAY may use such data for the purposes of this EULA only.

3.3 The SOFTWARE can send SOFTWARE license information and SOFTWARE usage statistic information to VMRAY (collectively “USAGE DATA”). The SOFTWARE does so only (i) if an internet connection is established, and (ii) if LICENSEE has not deactivated that option (note: if the option has been deactivated by the LICENSEE, this will not change with UPDATES). WARNING: If an internet connection is NOT established, VMRAY is unable to provide for UPDATES, even if they are most critical.

NOTE: VMRAY will not collect and/or store LICENSEE’s generated analysis, analyzed files, or comparable information strictly private to LICENSEE. Such strictly private information is not deemed to be USAGE DATA under this EULA.

3.4 VMRAY reserves the right to store and use all USAGE DATA without restrictions (i) to provide for UPDATES; and (ii) for VMRAY’s research and further development of VMRAY’s products.
3.5 The SOFTWARE utilizes optional validation services to further analyze (i) sample data (“SAMPLE DATA”); and (ii) reputation data derived from SAMPLE DATA and generated analysis (“REPUTATION DATA”), e.g., readable URL addresses (plain text) and hash values of other data. If LICENSEE has activated these optional validation services (and only then) (i) SAMPLE DATA will be transmitted to credible external service provider for further analysis; (ii) REPUTATION DATA will be transmitted to VMRAY and proceed from there to credible external service provider for further analysis. LICENSEE acknowledges and agrees (i) that such REPUTATION DATA and SAMPLE DATA will most likely be transmitted to servers outside of Germany; and (ii) that therefore it is LICENSEE’s sole responsibility to use discretion in utilizing these optional services.

3.6 All data as described in Section 3.2, 3.3, 3.4 and 3.5 above will be protected by LICENSOR and, if transmitted to VMRAY, by VMRAY, as applicable, against unauthorized disclosure using the same degree of care used to protect its own information of like importance, but in any case using no less than a reasonable degree of care.

3.7 The SOFTWARE offers LICENSEE the option to further analyze SAMPLE DATA and REPUTATION DATA via LICENSEE’s own service providers. If LICENSEE makes use of this option, LICENSEE acknowledges and agrees (i) that LICENSOR assumes no liability and / or responsibility whatsoever for the use of LICENSEE’s own service providers, and (ii) that it is therefore LICENSEE’s sole responsibility to use such own service providers.

3.8 LICENSOR and VMRAY may disclose any data stored or information received in the context of this EULA if this is required by law or any regulatory or government authority and then only after a notice to LICENSEE, provided there is reasonable time and possibility to send such notice.

3.9 LICENSEE has no right to inspect LICENSOR’s or VMRAY’s premises, SOFTWARE or related data systems.

4. Transferability; Non-Competition; Confidential Vulnerability Notification:

4.1 This license is granted to the LICENSEE only and as such does not permit to sell, lend, assign, lease, or transfer in any other way this EULA, the related license, or any copy of the SOFTWARE. Any transfer in violation of this provision is prohibited and may cause the license to be terminated with, in addition to any other remedies and damages allowed by law, no refund of any fees paid.

4.2 LICENSEE is not allowed to offer the operation of the SOFTWARE to third parties in any form. This includes, but is not limited to, providing a mechanism enabling third parties to submit malware or providing analysis reports created by the SOFTWARE to third parties. Any behavior in violation of this provision is prohibited and may cause the license to be terminated with, in addition to any other remedies and damages allowed by law, no refund of any fees paid.

4.3 LICENSEE agrees to not use the SOFTWARE for the purpose of competing with VMRAY in any manner. The SOFTWARE is licensed for LICENSEE’s internal use only.

4.4 In the event LICENSEE becomes aware of attack scenarios that could lead to an exploitable vulnerability of the SOFTWARE, LICENSEE shall immediately notify VMRAY and shall keep such information strictly confidential unless specific authorization (in writing) has been granted by VMRAY to LICENSEE, (i) allowing LICENSEE to disclose this information to third parties, and (ii) enabling VMRAY to follow a responsible disclosure process towards VMRAY’s customers. The LICENSEE acknowledges that irreparable damage may result to VMRAY, its business, property and goodwill in the event of a breach or threatened breach by the LICENSEE of this Section 4.4 of this AGREEMENT.
5. Limited Warranty; Limitation on Remedies:

5.1 LICENSOR warrants (i) that the SOFTWARE covered by this EULA will, for a period of ninety (90) days following its installation, operate substantially in accordance with the specifications found in ANNEX A, and (ii) that LICENSOR and VMRAY will perform its obligations under this EULA with reasonable care and expertise. As the SOFTWARE is used to analyze malware and, due to the nature of such malware, no guarantee can be given for (i) the derived data, (ii) the quantity or quality of the information contained in the generated analysis reports, (iii) the determinations of the suspiciousness or the maliciousness of analyzed data. IF IMPLIED WARRANTIES MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN ANY IMPLIED WARRANTIES OR CONDITIONS ARE LIMITED IN DURATION TO THE PERIOD OF THIS LIMITED WARRANTY (NINETY DAYS). SOME JURISDICTIONS DO NOT ALLOW A LIMITATION ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

5.2 LICENSOR warrants that the SOFTWARE itself contains no malware.

5.3 The LICENSEE’s sole and exclusive remedy for the breach of the limited warranty as set forth in this Section 5 of this EULA shall be, at LICENSOR’s option, either a reasonable refund for the fees paid for the use of the inadequate SOFTWARE during and limited to the period in question (less any taxes, shipping fees, etc.), or the repair or replacement of any defective SOFTWARE. Notwithstanding the foregoing, LICENSOR will not be responsible for any breach of warranty not reported during the warranty period.

5.4 LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITED WARRANTY AND LIMITED REMEDIES 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.

6. Disclaimer of Warranty:

6.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTY EXCEPT AS PROVIDED IN SECTION 5 OF THIS EULA (LIMITED WARRANTY). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, COMPLETENESS OF RESULTS. THIS DISCLAIMER SHALL APPLY EVEN IF THE LIMITATIONS SET FORTH HEREIN FAIL OF ITS ESSENTIAL PURPOSE.

6.2 THE SOFTWARE IS NOT DESIGNED OR MANUFACTURED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS, BUT NOT LIMITED TO, 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 THEIR FAILURE COULD LEAD DIRECTLY TO PERSONAL INJURY, DEATH, OR PROPERTY OR ENVIRONMENTAL DAMAGE. LICENSOR DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES.

6.3 LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY 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.

7. Warning; Limitation of Damages:

7.1 LICENSOR EXPLICITLY INFORMS AND WARNS YOU AS THE LICENSEE THAT ALL ANALYSIS UTILIZED BY THE SOFTWARE HAVE AMONG OTHERS THE PURPOSE TO EXAMINE THE CONTENT AND STRUCTURE OF UNKNOWN - AND MOST PROBABLY MALICIOUS - COMPUTER FILES AND THAT DESPITE SUFFICIENT AND INDUSTRY STANDARD ORIENTED CARE IN THE ANALYSIS THIS KIND OF ANALYSIS MAY RESULT IN (I) INCOMPLETE OR INCORRECT RESULTS AS WELL AS INCORRECT DETERMINATIONS OF THE SUSPICIOUSNESS OR THE MALICIOUSNESS OF ANALYZED DATA [VIZ. "FALSE NEGATIVES" (MALICIOUS SOFTWARE THAT IS INCORRECTLY MARKED AS NOT MALICIOUS) OR "FALSE POSITIVES" (BENIGN SOFTWARE THAT IS INCORRECTLY MARKED AS MALICIOUS)], AND / OR (II) THE EXPLOITATION OF VULNERABILITIES UNKNOWN AT THAT TIME. THUS, IF YOU CANNOT OR WILL NOT ACCEPT THAT THE SOFTWARE'S ANALYSIS CAN CAUSE THE AFOREMENTIONED EFFECTS, DO NOT USE THE SOFTWARE.

7.2 LICENSOR EXPLICITLY INFORMS AND WARNS YOU AS THE LICENSEE (I) THAT THE SOFTWARE UTILIZES DYNAMIC ANALYSIS TO OBSERVE THE BEHAVIOR OF UNKNOWN SOFTWARE EVEN MORE DEEPLY, (II) THAT THE PURPOSE OF SUCH DYNAMIC ANALYSIS IS TO ALLOW UNKNOWN - AND MOST PROBABLY MALICIOUS - COMPUTER FILES TO WORK UNDISTURBED SO THAT THE INTENDED BEHAVIOR OF SUCH FILES CAN BE OBSERVED AND ANALYZED, (III) THAT TO THIS END, THESE FILES ARE EXECUTED INSIDE A VIRTUAL MACHINE AND ALL PERFORMED OPERATIONS ARE MONITORED, (IV) THAT, FOR CORRECT AND SOUND ANALYSIS RESULTS, IT IS NECESSARY TO RECOGNIZE ALL POSSIBLE FUNCTIONALITY THAT IS CONTAINED IN THE ANALYZED FILES, (V) THAT CONSEQUENTLY NO EFFORTS ARE TAKEN BY THE SOFTWARE TO SUPPRESS, BLOCK OR WEAKEN THE EFFECTS OF THE OPERATIONS PERFORMED BY THE ANALYZED COMPUTER FILE, (VI) THAT - QUITE CONTRARILY - MALICIOUS AND DESTRUCTIVE EFFECTS ARE EXPLICITLY ADMITTED AND EXPECTED, AND (VII) THAT BY ACTIVATING THE DYNAMIC ANALYSIS IT IS THE LICENSEE'S SOLE RESPONSIBLE AND DUTY TO ASSURE, TAKE CARE, AND GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER. IF YOU CANNOT OR WILL NOT GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER, DO NOT USE THE SOFTWARE.

7.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ANY OF ITS 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 LICENSOR 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 EXPLICIT WARNINGS OF SECTION 6.2 ABOVE, SECTION 7.1 ABOVE, AND SECTION 7.2 ABOVE ARE EXPLICITLY INCORPORATED INTO THIS LIMITATION OF DAMAGES.

7.4 LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF DAMAGES 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.

8. Limitation of Liability:

8.1 IN ANY CASE, LICENSOR’S AND ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLED OR CONTROLLING ENTITIES, OR SUB-CONTRACTORS ENTIRE AGGREGATED CUMULATIVE LIABILITY TO LICENSEE FOR ALL LOSSES, DAMAGES, CLAIMS, SUITS OR OTHER ASPECTS 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 YOU FOR THE USE OF THE INADEQUATE SOFTWARE WITHIN A PERIOD OF THREE (3) MONTH IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

8.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OF LICENSOR’S AND ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLED OR CONTROLLING ENTITIES, OR SUB-CONTRACTORS POSSIBLE LIABILITY OBLIGATIONS SHALL TERMINATE TWELVE (12) MONTHS AFTER THE UNDERLYING CAUSE HAS OCCURRED.

8.3 LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSOR HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY 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.

9. Limitation on Exports:

9.1 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 materials provided related to or generated with the SOFTWARE.

9.2 The SOFTWARE is an EAR99 classified item. Thus, except in full compliance with all United States and other applicable laws and regulations, YOU agree (i) that YOU 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 YOU, in compliance with EAR99, first installed the SOFTWARE; and (ii) that YOU will not make the SOFTWARE accessible to an end-user of concern or in support of a prohibited end-use.

10. Duration, Term and Termination:

10.1 If not otherwise agreed upon, the initial term of this AGREEMENT shall be a one-time trial period of thirty (30) days (“TRIAL PERIOD”) from the date hereof. During the TRIAL PERIOD both Parties may terminate this EULA immediately without cause at any given time before the end of the TRIAL PERIOD by giving written notice to the other Party. At the end of the TRIAL PERIOD, this AGREEMENT will terminate automatically. During the TRIAL PERIOD, LICENSEE shall have no obligation to pay fees with respect to the TRIAL PERIOD.
10.2 If not otherwise agreed upon and confirmed in the INVOICE, and depending on the license type YOU chose to acquire, the regular term (“TERM”) of this EULA shall be either perpetual (“PERPETUAL LICENSE”) or for a twelve (12) month subscription period (“SUBSCRIPTION PERIOD”) (“SUBSCRIPTION LICENSE”). During the TERM, LICENSEE shall pay fees as stated in the INVOICE issued to the LICENSEE prior to the intended start of a TERM.

10.3 The TERM will start on the day the license key is provided to LICENSEE. Upon receipt of payment of the INVOICE, the LICENSEE has the right to request the delivery of the license key in short term. Before receipt of payment of the INVOICE, the delivery of the license key to the LICENSEE remains a voluntary service of LICENSOR and does not give rise to a legal claim.

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

10.5 At the end of the SUBSCRIPTION PERIOD, this AGREEMENT will terminate automatically. In case of a PERPETUAL LICENSE either Party may terminate this AGREEMENT without indication of reasons by giving written notice no less than thirty (30) days prior to the end of a calendar year.

10.6 Upon termination YOU must destroy the SOFTWARE, all accompanying materials, and all copies thereof. Except as otherwise expressly stated, any provisions of this AGREEMENT 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.

10.7 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 AGREEMENT, by law, or otherwise.

11. Applicable Law; Place of Jurisdiction; Place of Performance:

11.1 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, USA, 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.

11.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, 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 THE 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 SEAT, VENUE OR LEGAL PLACE OF ARBITRATION SHALL BE THE ICC REGIONAL OFFICE NEAREST TO VMRAY’S REGISTERED PLACE OF BUSINESS AT THAT TIME. THE LANGUAGE TO BE USED IN THE MEDIATION AND IN THE ARBITRATION SHALL BE ENGLISH.

11.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PLACE OF PERFORMANCE IS LICENSOR’S REGISTERED BUSINESS ADDRESS BY THE TIME OF PERFORMANCE.

12. 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 with 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.

13. Modifications to this AGREEMENT:

LICENSOR may modify this AGREEMENT at any time by posting a revised version in the SOFTWARE. The modified AGREEMENT will become effective when YOU click an “I Accept” button or check box presented with the modified AGREEMENT. The SOFTWARE will display a time limit of no less than ninety (90) days during which the modified AGREEMENT can be accepted; after this time limit has elapsed, the SOFTWARE will cease operation. In case of adverse changes to this AGREEMENT, LICENSEE shall have the right to terminate this AGREEMENT by giving written notice to LICENSOR. LICENSEE shall then receive a reasonable refund of the fees paid (less any related taxes) for the impossibility of continuing to use the SOFTWARE.

14. Withholding Tax; Force Majeure; Miscellaneous; Written Notices; Severability; Waiver; Headings:

14.1 All payments that YOU make shall be net of any applicable withholding tax or other similar levies (collectively “WITHHOLDING TAXES”). Any and all WITHHOLDING TAXES required by applicable law shall be paid by YOU. YOU 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.). YOU shall indemnify, keep indemnified and hold harmless, LICENSOR against all losses incurred or suffered by LICENSOR arising out of YOUR: (i) failure to duly and timely render YOUR 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 clause.

14.2 LICENSOR and any of its directors, officers, employees, controlled or controlling entities, or subcontractors 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, elements of nature or acts of God, or any other similar cause beyond the reasonable control of LICENSOR (“FORCE MAJEURE”). 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.

14.3 Except as expressly stated otherwise herein, (i) there are no other agreements, understandings between the Parties, or obligations on the part of LICENSOR related to the SOFTWARE, and (ii) this AGREEMENT, together with each ANNEX, contains the entire agreement of the Parties and supersedes any prior or present understanding or communications regarding its subject matter, and may only be amended by (a) a written agreement signed by an authorized representative of each
Party, or (b) the digital consent of an authorized representative of LICENSEE (e.g., a SOFTWARE administrator) to a modification to this AGREEMENT in accordance with Section 13.

14.4 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.

14.5 If any provision of this AGREEMENT 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.

14.6 Failure to insist on strict compliance with the terms and conditions of this AGREEMENT shall not be considered a waiver of such terms and conditions, which either Party may enforce at a later time.

14.7 The titles and headings of the various sections and paragraphs in this AGREEMENT 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 AGREEMENT.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND UNDERSTAND IT, AND THAT BY INSTALLING OR USING THE SOFTWARE YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITIES OF THE PARTIES. AS IT PERTAINS TO THE SOFTWARE THIS AGREEMENT SUPERSEDES ALL PRIOR ORAL AGREEMENTS, PROPOSALS OR UNDERSTANDINGS, AND ANY OTHER COMMUNICATIONS BETWEEN YOU AND LICENSOR RELATING TO THIS EULA.

ANNEX A: SOFTWARE SPECIFICATIONS

Depending on the license type YOU chose to acquire, VMRAY provides the following SOFTWARE.

A.] VMRay Analyzer:

1. SOFTWARE Specifications
LICENSEE can upload arbitrary executables or documents to the PLATFORM for thorough analysis. To that end, the SOFTWARE utilizes an optional reputation service as well as static analysis and one VMRAY unique and proprietary dynamic behavior monitoring approach.

Depending on the particular type, some files may be rejected by the SOFTWARE because no particular analysis method is known or configured yet. Examples of commonly known and hence accepted file types are Windows executables or Office and PDF documents.

If the file type is supported by the SOFTWARE, one analysis is automatically generated. Depending on the length of the current job queue, this may happen instantly or may be delayed for some time.

The uploading LICENSEE may optionally specify more than one target configuration. If multiple configurations are specified, for each of them one particular analysis is generated.

Each analysis consists of multiple behavior reports at different abstraction layers as well as a set of accompanying files. Examples of the latter are downloaded files, screenshots of the analysis system, and PCAP files with the captured network traffic.

2. Quota Management

2.1 Volume License:

In principle, (i) for each FINDING a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT, and (ii) for each TS REPUTATION ASSESSMENT a quantity of 1 (one) is subtracted from the maximum number of TS REPUTATION ASSESSMENTS. If there are no dynamic analyses, a quantity of 1 (one) per submission is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. Submissions may also trigger further recursive analyses, the FINDINGS of which will be subtracted with a quantity of 1 (one) from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. A more detailed description of the quota management can be found in the documentation accompanying the SOFTWARE; this description is hereby incorporated by reference into this ANNEX A.

2.2 Site License

Subject to Section 1.2.1 of this EULA, unlimited installations of the SOFTWARE to generate (i) an unlimited number of analyses, and (ii) a maximum number of TS REPUTATION ASSESSMENTS.

B.] VMRay Detector:

1. SOFTWARE Specifications

VMRay Detector is an optional add-on to VMRay Analyzer. Thus, the specifications of VMRay Analyzer apply with the following differences:

- LICENSEE receives an additional quota for a MAXIMUM NUMBER of VERDICTS per TIME SEGMENT. This quota amounts to ten times of LICENSEE’s MAXIMUM NUMBER of analysis results per TIME SEGMENT.
- LICENSE can use the additional quota to generate VERDICTS only.
If desired, a VERDICT’s corresponding analysis result can be retrieved subsequently. For each subsequently retrieved analysis result a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of analysis results per TIME SEGMENT.

For known-benign or known-malicious SAMPLE DATA, new dynamic analyses may not be performed and FINDINGS from existing dynamic analysis may be used instead.

2. Quota Management

2.1 Volume License:
In principle, (i) for each FINDING a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT, and (ii) for each TS REPUTATION ASSESSMENT a quantity of 1 (one) is subtracted from the maximum number of TS REPUTATION ASSESSMENTS. If there are no dynamic analyses, a quantity of 1 (one) per submission is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. Submissions may also trigger further recursive analyses, the FINDINGS of which will be subtracted with a quantity of 1 (one) from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. A more detailed description of the quota management can be found in the documentation accompanying the SOFTWARE; this description is hereby incorporated by reference into this ANNEX A.

2.2 Site License
No Site License available.

C.] VMRay Email Threat Defender:

1. SOFTWARE Specifications
VMRay Email Threat Defender is optional add-on to VMRay Analyzer that can be integrated into an email workflow to automatically analyze emails and provide related VERDICTS. The specifications of VMRay Analyzer apply with the following differences:

- The VMRay Email Threat Defender automatically analyzes all emails received from LICENSEE’s defined email accounts and submits certain emails to the VMRay Analyzer for further analysis. Manual submission of emails for analysis is therefore neither necessary nor supported by the VMRay Email Threat Defender.

- WARNING: THE VMRAY EMAIL THREAT DEFENDER DOES NOT DELAY THE DELIVERY OF AN EMAIL. SO IF YOU DON’T MAKE OTHER SETTINGS IN YOUR OWN IT ENVIRONMENT, A MALICIOUS EMAIL CAN REACH THE RECIPIENT AND CAUSE DAMAGE BEFORE IT HAS BEEN ANALYZED.

- The MAXIMUM NUMBER of VERDICTS per TIME SEGMENT is unlimited.

- The maximum number of email accounts the LICENSEE can specify for VMRay Email Threat Defender monitoring is specified in the INVOICE. The TRIAL PERIOD entitles the LICENSEE to use the VMRay Email Threat Defender for a maximum of 1,000 (one thousand) email accounts.

- If desired, a VERDICT’s corresponding analysis result can subsequently be retrieved manually via the VMRay Analyzer (additional license required). For each subsequently retrieved analysis result a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT.
▪ For known-benign or known-malicious SAMPLE DATA, new dynamic analyses may not be performed and FINDINGS from existing dynamic analysis may be used instead.
▪ The number of static and dynamic analyses running in parallel is restricted as specified in the INVOICE.

2. Quota Management

2.1 Volume License:

In principle, (i) VERDICTS are unlimited and are therefore not subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT, (ii) for each analysis result a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT, and (iii) for each TS REPUTATION ASSESSMENT a quantity of 1 (one) is subtracted from the maximum number of TS REPUTATION ASSESSMENTS. If there are no dynamic analyses, a quantity of 1 (one) per submission is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. Submissions may also trigger further recursive analyses, the analysis results of which will be subtracted with a quantity of 1 (one) from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. A more detailed description of the quota management can be found in the documentation accompanying the SOFTWARE; this description is hereby incorporated by reference into this ANNEX A.

2.2 Site License

No Site License available.

ANNEX B:

SERVICE AND SUPPORT PROVISIONS

During the TERM of the END-USER LICENSE AGREEMENT (“EULA”) between LICENSOR and LICENSEE, VMRAY will provide service and support to the LICENSEE based on the following additional terms and conditions (“SERVICE AND SUPPORT PROVISIONS”). All terms and conditions of the EULA apply to these SERVICE AND SUPPORT PROVISIONS and the terms and conditions of these SERVICE AND SUPPORT PROVISIONS 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 SERVICE AND SUPPORT PROVISIONS and the EULA, the EULA shall govern. IN PARTICULAR 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 VMRAY OR THE LICENSOR.

1.0 Fees; Scope

1.1 a) During the TERM of a valid SUBSCRIPTION LICENSE, Service and Support (hereinafter collectively “SUPPORT”) will be free of charge.
b) In case of a PERPETUAL LICENSE SUPPORT will be free of charge for the first twelve (12) month of the TERM with the option of a fee-based SUPPORT extension (“SUPPORT EXTENSION”). A SUPPORT EXTENSION will be considered SUPPORT for all purposes of this EULA (for the avoidance of doubt: upon termination or expiration of this EULA, a SUPPORT EXTENSION, too, will end). WARNING: IN THE ABSENCE OF A SUPPORT EXTENSION VMRAY IS UNABLE TO PROVIDE FOR UPDATES, EVEN IF THEY ARE MOST CRITICAL.

1.2 SUPPORT shall be provided as follows:
   - Evaluating feature requests (VMRAY will provide new features at its sole discretion).
   - Assisting LICENSEE in connection with the installation and configuration of the SOFTWARE.
   - Verifying reproducible program errors (“ERROR”) in the SOFTWARE.
   - 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 language only. Other languages may be offered at VMRAY’s sole discretion (additional costs may apply).

1.4 Unless expressly provided by mutual agreement between VMRAY and LICENSEE, SUPPORT will be provided remotely from VMRAY’s premises only (no on-site SUPPORT at LICENSEE’s premises).

1.5 SUPPORT will be provided during VMRAY’s normal business hours only (no weekends and no holidays).

1.6 LICENSEE consents and accepts that SUPPORT may also be provided by duly authorized subcontractors of VMRAY.

1.7 After the expiration of the warranty period VMRAY shall at its sole option and for as long and for such hours as it may decide ensure that the SOFTWARE essentially operates in accordance with the specifications found in the manual accompanying the most current version of the SOFTWARE.

2.0 Exclusions

2.1 If it happens that the SOFTWARE fails to analyze a specific malicious file, this will most likely not qualify as an ERROR but as a natural consequence of utilizing 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 in accordance with the specifications found in ANNEX A.

2.3 VMRAY’s SUPPORT does not cover third party products.

3.0 LICENSEE’s Responsibilities and Obligations

3.1 LICENSEE shall promptly notify VMRAY if the SOFTWARE is not operating correctly. Failure by the LICENSEE to notify VMRAY within one (1) week of the LICENSEE first becoming aware of such failure or incorrect working shall free VMRAY from all obligations to investigate or correct such failure or incorrect working. Such notification shall contain:
   - A comprehensive description of the nature of the suspected ERROR.
A detailed step-by-step description on how to reproduce the ERROR (e.g. relevant log file entries).

3.2 To receive VMRAY’s SUPPORT, LICENSEE is obligated to initiate and process a SUPPORT request via VMRAY’s customer support portal only, which is available at [https://support.vmray.com](https://support.vmray.com) or via email sent to support@vmray.com (“SUPPORT REQUEST”). By initiating a SUPPORT REQUEST, LICENSEE consents and accepts that the SUPPORT REQUEST is administered through the ticket system ZENDESK (further information on ZENDESK’s Security and Regional Data Hosting Policy is available on [https://www.zendesk.com/product/zendesk-security/](https://www.zendesk.com/product/zendesk-security/)).

3.3 LICENSEE shall provide to VMRAY, free of charge, the best possible assistance to enable VMRAY to carry out its SUPPORT-obligations under this AGREEMENT, including, but not limited to, full, safe and prompt access to the SOFTWARE.

3.4 LICENSEE shall promptly implement any and all (i) UPDATES, (ii) ERROR-fixes, and (iii) workarounds provided by VMRAY. 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, VMRAY 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, VMRAY shall react as follows, but only if the 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 VMRAY at its sole option concludes that a solution is required, VMRAY will inform LICENSEE of a scheduled date for such solution.

---------- END OF EULA FOR VMRAY SOFTWARE ----------