SOFTWARE AS A SERVICE AGREEMENT
FOR VMRAY SOFTWARE
VERSION 12

IMPORTANT – READ CAREFULLY: THIS SOFTWARE AS A SERVICE AGREEMENT ("SAASA" 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 SAASA 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 ACCOMPANYED COMPONENTS (EXECUTABLES, DOCUMENTATION, AND ALL OTHER FILES PROVIDED) AS A SERVICE (COLLECTIVELY “SOFTWARE”) ON A WEB-SERVER HOSTED IN GERMANY EITHER BY VMRAY OR BY A GERMAN HOSTING PROVIDER ENGAGED BY VMRAY (COLLECTIVELY “PLATFORM”). VMRAY (“VMRAY”) IS A LEGAL ENTITY REFERRED TO IN THE INVOICE.

YOU CONSENT AND ACCEPT THAT THIS SAASA 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 SAASA.

NOTE: LICENSOR DOES NOT LICENSE THE SOFTWARE TO INDIVIDUALS.

IF YOU DO NOT AGREE TO BE BOUND BY THIS SAASA, OR IF YOU ARE AN INDIVIDUAL, DO NOT USE THE SOFTWARE. IF APPLICABLE, YOU WILL BE REFUNDED. ONCE THE SOFTWARE HAS BEEN USED, ALL OF THE PROVISIONS OF THIS SAASA APPLY. ANY USE OF THE SOFTWARE BY THE LICENSEE SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THIS AGREEMENT.

1. SOFTWARE Service:

1.1 The sole purpose of the SOFTWARE is to analyze malware.

1.2 For that purpose, sample files can be submitted to the PLATFORM. Such files will then be automatically analyzed by the SOFTWARE and an analysis result will be generated. Depending on the license type YOU chose to acquire the generated analysis result and / or a judgment based on the analysis result (“VERDICT”) can then be used interactively via the PLATFORM’s web interface or retrieved.

1.3 Detailed specifications of the SOFTWARE and the respective license types are defined in Annex A (“ANNEX A”), hereby incorporated into this SAASA by reference.
2. Account:

2.1 As soon as practicable following the closing of this SAASA, VMRAY will make available the SOFTWARE to the LICENSEE by setting up an account on the PLATFORM, and providing the LICENSEE all necessary login details for that account (collectively “ACCOUNT”).

2.2 The SOFTWARE offers a user management, by means of which the LICENSEE can allow a certain number of other authorized users to use the ACCOUNT. Authorized users in this sense are only those (i) who clearly belong to the organizational unit of the LICENSEE as referenced in the invoice, and (ii) who can undoubtedly be identified by the SOFTWARE as belonging to the organizational unit of the LICENSEE (e.g. via a uniform email domain). The number of additional authorized users allowed is specified in the INVOICE.

2.3 It is the LICENSEE’s sole responsibility to protect the ACCOUNT and, depending on the license type YOU chose to acquire, the API-Key (“API-KEY”) and / or the access email (“ACCESS EMAIL”) from (i) any unauthorized access; or (ii) any unauthorized use. If -for any reason- the LICENSEE becomes aware of (i) any unauthorized ACCOUNT / ACCESS EMAIL / API-KEY access; or (ii) any unauthorized ACCOUNT / API-KEY use; or (iii) any incidents that my lead to an unauthorized ACCOUNT / ACCESS EMAIL / API-KEY access or an unauthorized ACCOUNT / ACCESS EMAIL / API-KEY use, it is the LICENSEE’s duty to immediately inform LICENSOR or VMRAY.

2.4 The LICENSEE acknowledges that the SOFTWARE and / or the PLATFORM may contain technical functions to protect the SOFTWARE and / or the PLATFORM from attacks and to ensure the availability of the PLATFORM by limiting requests per time unit or by blocking requests of certain origin. Limits of this type are displayed in the PLATFORM’s web interface.

3. License and Support:

3.1 Subject to the terms hereof, the SOFTWARE is provided on a temporary-use, non-exclusive, non-assignable, and non-transferable basis, to be used by the LICENSEE only via VMRAY’s Application Programming Interface (“API”) and / or ACCESS EMAIL and / or any standard web browser (whether API and / or ACCESS EMAIL and / or standard web browser is available to YOU, depends on the license type YOU chose to acquire).

3.2 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.

3.3 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.

3.4 The SOFTWARE may not be used (i) to modify, disassemble, reverse compile, or reverse engineer the SOFTWARE, (ii) to create any derivative works or other works that are based upon or derived from the SOFTWARE in whole or in part, or (iii) 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.

3.5 The SOFTWARE may only be used during the agreed license period (“TERM” as defined in Section 14. below). The LICENSEE acknowledges that the SOFTWARE and / or the PLATFORM may contain technical functionality to stop operations after the TERM has expired, the LICENSEE fails to pay due fees, or violates this SAASA in any other way.

3.6 VMRAY shall install UPDATES as they come available. If possible and reasonable, VMRAY shall inform LICENSEE of a predictable SOFTWARE downtime caused by such an UPDATE.
3.7 During the continuance of this SAASA, VMRAY will provide service and support as set forth in Annex B (“ANNEX B” and / or “SERVICE AND SUPPORT PROVISIONS”), hereby incorporated into this SAASA by reference. Unless otherwise explicitly specified in this SAASA, if the terms and conditions of this SAASA conflict with any terms and conditions contained in ANNEX B (SERVICE AND SUPPORT PROVISIONS), the terms and conditions of this SAASA shall govern.

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 SAASA, the related ACCOUNT, the ACCESS EMAIL, or the API-KEY. 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 and / or the ACCOUNT and / or the ACCESS EMAIL and / or the API-KEY 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. Fees; Maximum Numbers; Time Segments:

5.1 During the TRIAL PERIOD as defined in Section 14.1 below LICENSEE shall have no obligation to pay fees with respect to the TRIAL PERIOD.

5.2 If not otherwise agreed upon, during a regular term of this AGREEMENT (“REGULAR TERM”) as defined in Section 14.2 and 14.3 below LICENSEE shall pay fees as stated in the INVOICE issued to the LICENSEE prior to the intended start of a REGULAR TERM.

5.3 If not otherwise agreed upon, the fees as defined in Section 5.2 above entitle the LICENSEE to use the SOFTWARE to generate (i) a maximum number of analyses, and (ii) a maximum number of (a) analysis results, and / or (b) 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 REGULAR TERM. Maximum numbers (“MAXIMUM NUMBERS”) in this sense are: (i) number of static and dynamic analyses running in parallel; and (ii) 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 100 (hundred) FINDINGS per day. Unused FINDINGS are not transferable to following TIME SEGMENTS.
6. Trade Secrets; Data protection; Freedom of Use of Generated Analysis:

6.1 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.

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

6.3 VMRAY is logging every access to the SOFTWARE and the PLATFORM. Except as provided otherwise herein VMRAY may use such data for the purposes of this AGREEMENT only.

6.4 VMRAY stores (i) all data uploaded by the LICENSEE (“SAMPLE DATA”); (ii) every generated analysis (“RESULT DATA”); (iii) reputation data derived from SAMPLE DATA and RESULT DATA (collectively “REPUTATION DATA”), e.g., readable URL addresses (plain text) and hash values of other data; and (iv) statistical information about the SOFTWARE usage (“USAGE DATA”); (SAMPLE DATA, RESULT DATA, REPUTATION DATA and USAGE DATA collectively referred to as “OPERATIONAL DATA”). VMRAY reserves the right to use all OPERATIONAL DATA without restrictions for VMRAY’s research and further development of VMRAY’s products. VMRAY further reserves the right to share SAMPLE DATA and its corresponding FINDINGS with other customers if the sample data uploaded by a customer exactly match the SAMPLE DATA previously uploaded by LICENSEE. SAMPLE DATA and RESULT DATA will be deleted as specified by LICENSEE in LICENSEE’s ACCOUNT with a maximum Global Retention Limit as displayed in LICENSEE’s ACCOUNT.

6.5.1 During the TRIAL PERIOD (as defined in Section 14.1 below) (i) VMRAY reserves the right to transmit REPUTATION DATA without restrictions to credible external service provider for further analysis; (ii) SAMPLE DATA will only be transmitted to credible external service provider for further analyses if LICENSEE chooses to utilize these optional service. 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 (x) in submitting data during the TRIAL PERIOD, and (xx) in utilizing the optional service; and (iii) that LICENSEE will not submit personally identifiable information.

6.5.2 During a REGULAR TERM, REPUTATION DATA and SAMPLE DATA will only be transmitted to credible external service provider for further analyses if LICENSEE chooses to utilize these optional services. LICENSEE acknowledges and agrees (i) that such REPUTATION DATA and SAMPLE DATA will then most likely be transmitted to servers outside of Germany; (ii) that therefore it is LICENSEE’s sole responsibility to use discretion in utilizing these optional services; and (iii) that LICENSEE will not submit personally identifiable information.

6.6 All data as described in Section 6.2, 6.3 and 6.4 above will be protected by LICENSOR and 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.

6.7 LICENSOR and VMRAY may disclose any data stored or information received in the context of this AGREEMENT 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.
6.8 LICENSEE has no right to inspect LICENSOR’s or VMRAY’s premises, SOFTWARE, PLATFORM or related data systems.

7. Service Level Commitments

7.1 LICENSOR explicitly informs and warns YOU as the LICENSEE that the purpose of the SOFTWARE is to analyze unknown - and most probably malicious - computer files and that to this end, these files are executed and all performed operations are monitored and that, for correct and sound analysis results, it is necessary to recognize all possible functionality that is contained in the analyzed files and 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 and that - quite contrary – malicious and destructive effects are explicitly admitted and expected.

7.2 Due to the nature of such malicious and destructive effects as described in Section 7.1 above, no guarantee can be given as to availability (uptime) of the SOFTWARE and / or the PLATFORM whatsoever. In contrary, it cannot be ruled out that malicious and destructive effects as described in Section 7.1 above may lead to the SOFTWARE and / or the PLATFORM being temporarily unavailable (downtime).

7.3 Due to the nature of such malicious and destructive effects as described in Section 7.1 above, no guarantee can be given as to the time needed to get an unavailable SOFTWARE and / or PLATFORM up and running again (recovery time). In contrary, it is most likely that malicious and destructive effects as described in Section 7.1 above are caused by functions never existing before and, thus, make it necessary to recover the SOFTWARE and / or the PLATFORM with methods never tried before.

8. Limited Warranty; Limitation on Remedies:

8.1 LICENSOR warrants (i) that the SOFTWARE covered by this SAASA will operate substantially in accordance with the specifications found in ANNEX A, (ii) that LICENSOR and VMRAY will perform its obligations under this SAASA with reasonable care and expertise, and (iii) that the PLATFORM will be available to the LICENSEE in accordance with the service level commitments given in Section 7 of this AGREEMENT. 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 THE LIMITATIONS ABOVE MAY NOT APPLY TO YOU.

8.2 LICENSOR warrants that the SOFTWARE itself contains no malware.

8.3 The LICENSEE’s sole and exclusive remedy for the breach of the limited warranty as set forth in this Section 8 of this SAASA shall be a reasonable refund for the fees paid (less any related taxes) for the use of the SOFTWARE during -and limited to- the period in question. Notwithstanding the foregoing, LICENSOR will not be responsible for any breach of warranty not reported during the warranty period.

8.4 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.
9. Disclaimer of Warranty:

9.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTY EXCEPT AS PROVIDED IN SECTION 8 OF THIS SAASA (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.

9.2 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.

9.3 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.

10. Warning; Limitation of Damages:

10.1 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.

10.2 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, FOR CORRECT AND SOUND ANALYSIS RESULTS, IT IS NECESSARY TO RECOGNIZE ALL POSSIBLE FUNCTIONALITY THAT IS CONTAINED IN THE ANALYZED FILES, (IV) THAT CONSEQUENTLY NO EFFORTS ARE TAKEN BY THE SOFTWARE TO SUPPRESS OR BLOCK ACCESS TO THIRD PARTY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER PERFORMED BY THE ANALYZED COMPUTER FILE, (V) THAT - QUITE CONTRARY - MALICIOUS AND DESTRUCTIVE EFFECTS ARE EXPLICITLY ADMITTED AND EXPECTED, AND (VI) 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 THIRD PARTY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER. IF YOU CANNOT OR WILL NOT GUARANTEE THAT THESE UNAVOIDABLE EFFECTS DO NOT HARM ANY THIRD PARTY COMPUTER SYSTEMS, NETWORK INFRASTRUCTURE OR DATA WHATSOEVER, DO NOT USE THE SOFTWARE.

10.3 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 SAASA 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 9.2 ABOVE, SECTION 10.1 ABOVE AND SECTION 10.2 ABOVE ARE EXPLICITLY INCORPORATED INTO THIS LIMITATION OF DAMAGES.

10.4 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.

11. Limitation of Liability:

11.1 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 SAASA 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.

11.2 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.

11.3 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.

12. Force Majeure:
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.

13. Export Restrictions:
In some jurisdictions, using the SOFTWARE, or materials provided related to or generated with the SOFTWARE, may be subject to export or import regulation (especially when uploading sample files to the PLATFORM). 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.

14. Duration, TERM and Termination:
14.1 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 SAASA 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.

14.2 The REGULAR TERM will start upon receipt of payment of an INVOICE as defined in Section 5.2 above.

14.3 If not otherwise agreed upon, the REGULAR TERM of this AGREEMENT shall be twelve (12) month. During the REGULAR TERM 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. At the end of the REGULAR TERM, this AGREEMENT will terminate automatically.

14.4 Upon termination VMRAY will block LICENSEE’s access to the ACCOUNT. LICENSEE will then no longer be able (i) to use the SOFTWARE; and (ii) to download generated analysis. Termination shall not relieve either Party of obligations incurred prior thereto.

14.5 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.

15. 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.

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

16.1 ALL CLAIMS UNDER ANY THEORY OF LIABILITY IN ANY WAY TO THIS SAASA AND ALL OTHER CLAIMS OR ASPECTS WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS SAASA 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.

16.2 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 SAASA 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.

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

17. 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.

18. Withholding Tax; Miscellaneous; Written Notices; Severability; Waiver; Headings:

18.1 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.

18.2 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 17.

18.3 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.

18.4 If any provision of this AGREEMENT is declared invalid or unenforceable, such provision shall be —to the maximum extent permitted by applicable law - 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 —to the maximum extent permitted by applicable law - not affect any other provision of this SAASA, and this SAASA 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.

18.5 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.

18.6 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 SAASA AND UNDERSTAND IT, AND THAT BY USING THE SOFTWARE YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT THIS SAASA 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 SAASA.

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

In principle, for each FINDING a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. 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.

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
In principle, for each FINDING a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. 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.

C. VMRay Investigator:

1. SOFTWARE Specifications

VMRay Investigator is a version of the VMRay Analyzer with limited functionality. Thus, the specifications of the VMRay Analyzer apply with the following limitations:

- No API access available.
- Only Windows 7 is supported for dynamic analyses.
- File submission size is limited to 10MB.

2. Quota Management

In principle, for each FINDING a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. 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.

D. 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 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 for which the VMRay Email Threat Defender monitors emails 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.

2. Quota Management

In principle, (i) VERDICTS are unlimited and are therefore not subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT, and (ii) for each analysis result a quantity of 1 (one) is subtracted from the MAXIMUM NUMBER of FINDINGS per TIME SEGMENT. 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.

ANNEX B:
SERVICE AND SUPPORT PROVISIONS

During the term of the SOFTWARE AS A SERVICE AGREEMENT (“SAASA” OR “AGREEMENT”) between LICENSOR and LICENSEE, VMRAY will provide service and support free of charge to the LICENSEE based on the following additional terms and conditions to the SAASA (“SERVICE AND SUPPORT PROVISIONS”). All terms and conditions of the SAASA 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 SAASA. Defined terms used herein but not otherwise defined herein shall have the meanings given such terms in the SAASA. In the event of a conflict between these SERVICE AND SUPPORT PROVISIONS and the SAASA, the SAASA 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 SAASA IN FAVOUR OF VMRAY OR THE LICENSOR.

1.0 Scope

1.1 Service and Support (hereinafter collectively “SUPPORT”) shall be provided as follows:

- Evaluating feature requests (VMRAY will provide new features at its sole discretion).
- Assisting LICENSEE in connection with the setup of an ACCOUNT on the PLATFORM and the 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.

1.2 SUPPORT will be provided in English language only. Other languages may be offered at VMRAY’s sole discretion (additional costs may apply).

1.3 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).

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

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

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) a misuse of the SOFTWARE by LICENSEE; or (ii) an operation of the SOFTWARE by LICENSEE which is not 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 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 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/).

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 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 SAASA FOR VMRAY SOFTWARE --------