

SOFTWARE AS A SERVICE AGREEMENT FOR VMRAY SOFTWARE VERSION 13

THIS SOFTWARE AS A SERVICE AGREEMENT (“**SAASA**”) IS A LEGALLY BINDING AGREEMENT BETWEEN CUSTOMER AND PROVIDER. IT COVERS THE TERMS AND CONDITIONS FOR CUSTOMER’S POTENTIAL USE OF VMRAY SOFTWARE AS A SERVICE ON SERVERS CONTROLLED BY PROVIDER.

PROVIDER AND CUSTOMER SHALL BE REFERRED TO COLLECTIVELY AS “**PARTIES**” OR INDIVIDUALLY AS “**PARTY**”. NOTWITHSTANDING ANYTHING ELSE STATED HEREIN, IF CUSTOMER AND PROVIDER HAVE EXECUTED A DIFFERENT WRITTEN AGREEMENT REGARDING THE PROVISION OF AFOREMENTIONED SERVICES (“**SIGNED AGREEMENT**”), THEN THE TERMS OF THE SIGNED AGREEMENT SHALL GOVERN AND CONTROL AND THIS SAASA SHALL HAVE NO EFFECT.

Definitions:

Access Credentials: Any API-key, access email, user name, identification number, password, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Subscription Services.

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

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

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

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

Confidential Information: Any 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, Service specification, documentation, pricing, and any benchmark data and results produced.

Customer: The entity, including its Affiliates, entering into this SAASA with Provider.

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

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

Provider: Either VMRay, Inc., a Delaware United States of America (“**U.S.**”) corporation, located in 22 Boston Wharf Road, 7th Floor Boston, MA 02210 (U.S.) or VMRay GmbH, a German company, located in Universitätstraße 142, Bochum (Germany), as specified in the invoice which relates to this SAASA. In the absence of such invoice, Provider shall be VMRay, Inc., if Customer resides in the Americas (North, Central and South America), or VMRay GmbH, if Customer resides outside of the Americas.

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

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

Reseller: An authorized third party who distributes the Services to Customer under the terms of an agreement between Customer and such Reseller (“**Reseller Agreement**”).

Sample: Data submitted by Customer 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).

Service: The provision of VMRay software as well as all accompanied components (executables, documentation, and all other files provided) as a service under this SAASA and its parts, in particular Annexes, purchase orders and invoices.

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

Updates: Upgrades, updates, patches, and hotfixes of the Service that replace or supplement the original Service.

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

IF CUSTOMER ACQUIRES THE SERVICE FROM A RESELLER THEN THE TERMS OF THE RESELLER AGREEMENT SHALL GOVERN CUSTOMER'S USE OF THE SERVICE AND NOT THIS SAASA. RESELLERS MAY ONLY GRANT RIGHTS, AND MUST PASS THROUGH CONDITIONS, CONSISTENT WITH THIS SAASA.

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

PROVIDER DOES ONLY IN EXCEPTIONAL CASES OFFER THE SERVICE TO INDIVIDUALS (E. G. RESEARCHER ACCOUNTS), AS IT IS AN ENTERPRISE SOLUTION.

IF YOU DO NOT AGREE TO BE BOUND BY THIS SAASA DO NOT USE THE SERVICE. ONCE THE SERVICE HAS BEEN USED, ALL PROVISIONS OF THIS SAASA APPLY. ANY USE OF THE SERVICE BY THE CUSTOMER SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THIS SAASA.

1. Service, Restrictions and Support.

1.1 Subject to the terms hereof, the Service is provided on a temporary-use, non-exclusive, non-assignable, and non-transferable basis.

1.2 Provider shall install Updates as they come available. If possible and reasonable, Provider shall inform Customer of a predictable Service downtime caused by such an Update.

1.3 The Service may only be used during the agreed Term or Trial Period.

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

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

1.6 Customer may not modify, disassemble, reverse compile, or reverse engineer the Service.

1.7 This Service is granted to Customer for internal use only. Customer may not: (i) sell, lend, assign, lease, or transfer in any other way this SAASA, the related Account or Access Credentials, (ii) create any derivative works or other works that are based upon or derived from the Service 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 foregoing is expressly permitted by applicable law. The aforementioned prohibited circumventions of the internal use restriction include, but are not limited to: (i) providing a mechanism enabling third parties to submit Samples, (ii) providing Analysis Reports and Verdicts created by the Service to third parties, or (iii) providing services or products to third parties, where malware detection and analysis capabilities are built in whole or in part on Service. Any behavior in violation of this provision is not allowed and Provider may terminate the Service, in addition to any other remedies and damages allowed by law and with no refund of any fees paid.

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

1.9 Detailed specifications of the Service are defined in ANNEX A (“Service Specifications”) and the support provisions are set forth in ANNEX B (“Support Provisions”), hereby incorporated into this SAASA by reference.

2. Account.

2.1 As soon as practicable following the closing of this SAASA, Provider will enable the Customer to set up an account for the use of the Service (“**Account**”).

2.2 The Service offers a user management, by means of which Customer 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 Customer as referenced in the invoice, and (ii) who the Service can identify.

2.3 It is Customer’s sole responsibility to protect the Account and the Access Credentials from: (i) any unauthorized access; or (ii) any unauthorized use. If - for any reason - Customer becomes aware of: (i) any unauthorized access; or (ii) any unauthorized use; or (iii) any incidents that may lead to an unauthorized use, it is Customer’s duty to immediately inform Provider. For sake of clarity, the sharing of Access Credentials within the Customer’s organization to exceed user limits shall be regarded as unauthorized access and use.

3. Data Processing; Data protection.

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

3.2 Customer acknowledges and agrees that the use of the Service involves a necessary data transfer between the Affiliates VMRay GmbH and VMRay, Inc., and that the transfer of any personal data between these Affiliates takes place on the basis of a Data Processing Agreement (“**DPA**”), in compliance with the provisions of the General Data Protection Regulation (“**GDPR**”). The transfer of any personal data from VMRay GmbH to VMRay, Inc. is additionally protected by an Agreement on the Standard Contractual Clauses (“**EU Model Clauses**”). Provider agrees that it will upon request enter into a further DPA with Customer, to document the adequate level of data protection for any personal data that may be transferred.

3.3 The Service may collect and utilize statistical information generated by Customer’s use of the Service (“**Usage Statistics**”), but only for purposes of research and development for future VMRay products and for the improvement of the Service. For clarification, Usage Statistics do not include Samples, Analysis Reports and/or personal data. Nothing in this section shall permit Provider to provide Usage Statistics to any third party other than as expressly permitted by this SAASA.

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

3.4.1 VMRay ESPs may be located outside of Germany and/or the U.S. are bound by DPA and/or EU Model Clauses to process any Reputation Data only in accordance with data

protection standards not less restrictive than the terms and conditions of this SAASA. When utilizing VMRay ESPs the Reputation Lookup is always originating from VMRay GmbH's server and thus the identity of the Customer is not disclosed.

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

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

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

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

3.8 Customer has no right to inspect Provider's premises, Service or related data systems.

4. Confidentiality.

4.1 The Service 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. Customer shall not use or disclose any such trade-secret protected information to third parties during and after the term of this SAASA and for so long thereafter as such trade secret-protected information remains protected as trade secrets under applicable law.

4.2 The Parties agree that when receiving Confidential Information from the disclosing Party, the receiving Party shall hold it in confidence and shall not disclose or use such information except as necessary to carry out the purpose of this SAASA. 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 SAASA.

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

4.4 Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to

receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.

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

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

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

5. Confidential Vulnerability Notification.

In the event Customer becomes aware of attack scenarios that could lead to an exploitable vulnerability of the Service, Customer shall immediately notify Provider and shall keep such information strictly confidential unless specific written authorization has been granted by Provider to Customer: (i) allowing Customer to disclose this information to third Parties, and (ii) enabling Provider to follow a responsible disclosure process towards Provider's customers. Customer acknowledges that irreparable damage may result to Provider, its business, property and goodwill in the event of a breach or threatened breach by Customer of this Section.

6. Service Level Commitments; Limited Warranties; Disclaimers

6.1 Provider warrants that the Service will be available to the Customer in accordance with the Service Level Commitments in ANNEX C ("Service Level Agreement") incorporated into this SAASA by reference.

6.2 Provider warrants that the Service itself contains no malware.

6.3 Provider warrants: (i) that the Service will be provided substantially in accordance with the specifications found in ANNEX A, and (ii) that Provider will perform its obligations under this SAASA with reasonable care and expertise.

6.4 The Service examines the content, structure and behavior of unknown – and most probably malicious – Samples. Despite Provider's commercially reasonable care, Analysis may cause: (i) incomplete or incorrect Analysis Reports as well as incorrect Verdicts (i.e.,

benign Samples incorrectly marked as malicious and/or malicious Samples incorrectly marked as not malicious), and/or (ii) the exploitation of vulnerabilities unknown at the time. Provider does not give a respective warranty, condition, undertaking, indemnity or other comfort.

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

7. General Warranty Disclaimers.

7.1 THE SERVICE UTILIZES DYNAMIC ANALYSIS TO OBSERVE THE BEHAVIOR OF SAMPLES AND IDENTIFY SUSPICIOUS AND MALICIOUS ACTIVITY. TO ACHIEVE THE BEST POSSIBLE RESULTS, NO EFFORTS ARE TAKEN TO SUPPRESS, BLOCK OR WEAKEN ANY ACTION, INCLUDING WITHOUT LIMITATION, ANY POSSIBLY MALICIOUS OR DESTRUCTIVE EFFECTS.

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

7.3 THE SERVICE IS NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS, WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT SYSTEMS, MEDICAL SYSTEMS, TRANSPORT MANAGEMENT SYSTEMS, OR WEAPON OR COMBAT SYSTEMS, IN WHICH THE FAILURE OF THE SERVICE COULD LEAD TO PERSONAL INJURY, DEATH, OR PROPERTY OR ENVIRONMENTAL DAMAGE. PROVIDER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES.

8. Indemnification.

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

8.2. Provider 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 Service not made by Provider, if: (ii) the Service is not being used in accordance with Provider'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 is a result of use of the Service in combination with any third party product, or (v) the applicable fees have not been paid or Customer is otherwise in breach of this SAASA. The indemnifications contained herein shall not apply and Provider shall have no liability in relation to any Service produced by Provider at the specific direction of Customer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATION OF PROVIDER REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER REGARDING ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

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

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

9. Limitation of Liability.

9.1 EXCEPT FOR A BREACH OF SECTION 4 (CONFIDENTIALITY) AND OF THIRD PARTY CLAIMS ARISING UNDER SECTION 8 (INDEMNIFICATION), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER AND CUSTOMER, INCLUDING ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONTROLLED OR CONTROLLING ENTITIES, OR SUB-CONTRACTORS, SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, INTERRUPTION, LOSS OF USE OF SERVICE OR EQUIPMENT, ETC.) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SAASA OR CUSTOMER'S USE, OR THE INABILITY OF CUSTOMER TO USE, THE SERVICE, EVEN IF THE PARTY CAUSING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE WARRANTY RESTRICTIONS AND DISCLAIMERS PROVIDED IN SECTIONS 6 AND 7 ABOVE ARE EXPRESSLY INCORPORATED INTO THIS LIMITATION OF DAMAGES.

9.2 IN ANY CASE, PROVIDER'S AND ANY OF ITS DIRECTORS', OFFICERS', EMPLOYEES', CONTROLLED OR CONTROLLING ENTITIES', OR SUBCONTRACTORS' ENTIRE AGGREGATED CUMULATIVE LIABILITY OBLIGATION TO CUSTOMER FOR ALL LOSSES, DAMAGES, CLAIMS, OR SUITS OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM, OR RELATED

TO THE PERFORMANCE OR BREACH OF THIS SAASA SHALL BE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE SERVICE UNDER THE PURCHASE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. .

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

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

10. U.S. Government End Users.

The Service 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 Service 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 Service, or materials provided related to or generated with the Service, may be subject to export or import regulation. Customer 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 Service or related materials provided with, related to, or generated with the Service.

11.2 Customer acknowledges that Customer 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, Fees and Termination.

12.1 If not otherwise agreed upon and confirmed in the invoice, and depending on the Service type chosen by Customer, the regular term ("**Term**") of this SAASA shall be twelve (12) months.

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

12.3 Unless agreed upon otherwise, the Term will start on the date specified in the invoice. If Provider voluntarily enables a use of the Service to Customer before that date, the Term shall start on the date the use is enabled.

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

12.5 At the end of the Term, this SAASA will terminate automatically.

12.6 Upon termination, Provider will block Customer's access to the Account. Customer will no longer be able to: (i) use the Service and (ii) download any submitted or generated data. 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 SAASA, by law, or otherwise.

13. Trial Period.

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

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

13.3 At the expiration of the Trial Period, this SAASA will terminate automatically unless Provider has received a purchase order from Customer.

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

14.1 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, U.S., exclusive of any provisions of the United Nations Convention on the International Sale of Goods and without regard to its principles of conflicts of law. The venue for such claims that are not subject to arbitration shall be heard and determined in any federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan. The Parties hereby irrevocably submit to the exclusive jurisdiction of such courts (and, in the case of appeals, appropriate appellate courts therefrom) in any such action or proceeding and irrevocably waive the defenses of lack of personal jurisdiction or any inconvenient forum to the maintenance of any such action or proceeding.

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

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

15. Modifications to this SAASA.

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

15.2 Provider may request an amendment of this SAASA at any time by sending an email to Customer's contact person provided in Customer's Account. The request shall include: (i) a written proposed amendment titled "Proposed Amendment to the Current Software as a Service Agreement for VMRay Software Version", and (ii) a written statement that provides the Customer with an option to terminate this SAASA with a pro-rata refund of any prepaid fees if the Customer does not agree to the proposed amendment.

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

"Please review this proposed amendment.

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

16. Miscellaneous.

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

16.2 Provider 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 Provider. Provider 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 Provider related to the Service, and (ii) this SAASA, 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 SAASA 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 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.

16.6 Failure by either Party to insist on strict compliance with the terms and conditions of this SAASA 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 SAASA 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 SAASA.

16.8 CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ THIS SAASA AND UNDERSTANDS IT, AND THAT BY USING THE SERVICE CUSTOMER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

ANNEX A: Service Specifications

A.1] VMRay Analyzer.

1. Service Specifications

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

2. Service Restrictions

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

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

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

2.1 Trial Phase

During the Trial phase Customer is entitled to use the Service with a User Limit of 5, a Job Limit of 1 and an Analyzer Quota of 100.

2.2 Term Phase

During the Term phase Customer is entitled to use the Service with a User Limit, a Job Limit and an Analyzer Quota as specified in the invoice.

A.2.] VMRay Detector.

1. Service Specifications

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

2. Service Restrictions

When using the VMRay Analyzer interfaces the Service Restrictions in Annex A.1 apply.

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

2.1 Trial Phase

During the Trial phase Customer is entitled to use the Service with a User Limit of 5, a Job Limit of 2, an Analyzer Quota of 100 and a Detector Quota of 1000.

2.2 Term Phase

During the Term phase Customer is entitled to use the Service with a User Limit, a Job Limit, an Analyzer Quota, and a Detector Quota as specified in the invoice.

A.3.] VMRay Email Threat Defender.

1. Service Specifications

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

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

2. Service Restrictions

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

- maximum number of mailboxes ("**Mailbox Limit**").
- maximum number of 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 Email Threat Defender can be integrated with VMRay Analyzer to retrieve Analysis Reports for Verdicts being generated by VMRay Email Threat Defender. Each subsequently retrieved Analysis Report contributes to the Analyzer Quota of VMRay Analyzer as described in Annex A.1.

2.1 Trial Phase

During the Trial phase Customer is entitled to use the Service with a Mailbox Limit of 1000 and a Job Limit of 4.

2.2 Term Phase

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

ANNEX B: Support Provisions

During the Term, either Provider or a Reseller will provide support (herein collectively referred to as “**Support**”) to Customer.

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

Support by Provider shall be a basic Support in accordance with the following additional terms and conditions (“**Support Provisions**” or “**SP**”). The SP 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 SP and the SAASA, the SAASA 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 SAASA IN FAVOUR OF THE PROVIDER.

1.0 Fees; Scope.

1.2 Support shall be provided, as follows:

- Evaluating feature requests (Provider will provide new features at its sole discretion).
- Assisting Customer in connection with the setup of an Account and configuration of the Service.
- Verifying reproducible program errors in the Service (“**Error**”).
- Troubleshooting Errors by using reasonable efforts to provide solutions to Errors for which there are not existing known workarounds or patches.

1.3 Support will be provided in English or German language. Other languages may be offered at Provider’s sole discretion (additional fees may apply).

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

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

1.6 Customer agrees that Support may also be provided by qualified and duly authorized subcontractors of Provider.

2.0 Exclusions.

2.1 If the Service fails to analyze a specific malicious Sample, this failure will most likely not qualify as an Error, but as a natural consequence of utilizing automated Static and Dynamic Analysis for malware dissection.

2.2 No Support will be provided if the Error is caused by a misuse of the Service by Customer or an operation of the Service by Customer which is not in accordance with the specifications found in ANNEX A.

2.3 Provider's Support does not cover third party products.

3.0 Customer's Responsibilities and Obligations.

3.1 Customer shall promptly notify Provider if the operation of the Service does not conform to documentation provided by Provider. 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 Customer shall initiate a Support request via Provider's customer support portal only, which is available at <https://support.vrray.com> or via email sent to support@vrray.com ("**Support Request**").

3.3 Customer shall provide to Provider the commercially reasonable assistance to assist Provider with SP services.

3.4 Customer shall always and continuously backup all relevant data on systems that may be affected by the use of the Service.

4.0 Support-Procedure.

4.1 In General: Upon receipt of a Support Request, Provider 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, Provider shall react as follows, but only if Customer has fulfilled its obligations set out in Section 3 above:

Level 1: CRITICAL IMPACT

- Definition: Service usage in its entirety is impossible AND there is a critical impact on Customer's business (e.g. due to complete Service failure or direct security impact on the Service).
- 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 Service functions, Service usage is severely restricted AND there is a major impact on Customer'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 Service functions, Service usage is limited AND there is a minor impact on Customer'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-Service 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 Provider at its sole option concludes that a solution is required, Provider will inform Customer of a scheduled date for such solution.

ANNEX C: Service Level Agreement

- 1. Availability.** Provider shall make the Service available 99% of the time, except as provided below. Availability means that Customer can execute and use the essential functions of the Service as defined in the Agreement. The achievement of Availability will be calculated per calendar quarter, as follows:

$$\left[\left(\frac{\text{total} - \text{nonexcluded} - \text{excluded}}{\text{total} - \text{excluded}} \right) * 100 \right] \geq 99\%$$

Where:

- *total* means the total number of minutes in the calendar quarter;
- *nonexcluded* means downtime that is not *excluded*; and
- *excluded* means:
 - Any planned downtime (not to exceed 36 hours in any calendar quarter) of which Provider gives 24 or more hours' notice via email or via a conspicuous on-screen message in the Service.
 - Any unavailability caused by circumstances beyond Provider's reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Provider employees), or third party Internet service provider failures or delays (other than those Internet service providers under contract with Provider).

For any partial calendar quarter during which Customer subscribes to the Service, availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

- 2. Remedies.** Should Provider fail to make the Service available as set forth in Section 1 above in a calendar quarter, Customer will receive one full day of use of the Service without payment of subscription fees, for each full or partial hour of Service unavailability below the percentage specified in Section 1 above. Should Provider fail to make the Service available as set forth in Section 1 above in two consecutive calendar quarters, Customer may terminate the Agreement by providing notice of termination in accordance with Section 3 below, in which case Provider will refund to Customer the unused portion of prepaid fees for the remainder of the Term following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.
- 3. Claims and Notices.** To claim a remedy under this SLA, Customer shall send Provider a notice, via email addressed to support@vmray.com within 20 business days after the end of each calendar quarter. Claims may be made on a calendar-quarter basis only and must be submitted within 20 business days after the end of the applicable quarter, except where a Term ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 20 business days after the Term end-date. All claims will be verified against Provider's system records.

----- END OF SAASA FOR VMRAY SERVICE -----