

Trend Micro End User License Agreement

Trend Micro SafeSync Products and Services

Version: English/Multi-country

Purpose: Trial and Paid Use Subscription License

Date: January 2011

IMPORTANT: THE FOLLOWING AGREEMENT, INCLUDING TREND MICRO PRIVACY POLICY AND SECURITY POLICY, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE AND WHICH CAN BE ACCESSED AT WWW.TRENDMICRO.COM (COLLECTIVELY, THE "AGREEMENT") SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH TREND MICRO INCORPORATED OR AN AFFILIATE ("TREND MICRO") IS WILLING TO LICENSE THE TREND MICRO SAFESYNC PRODUCT AND SERVICES" AND ACCOMPANYING "DOCUMENTATION" TO "YOU" AS AN INDIVIDUAL USER OR AN AUTHORIZED REPRESENTATIVE OF AN ENTITY. BY ACCEPTING THIS AGREEMENT, YOU ARE ENTERING INTO A BINDING LEGAL CONTRACT WITH TREND MICRO. THE TERMS AND CONDITIONS OF THE AGREEMENT THEN APPLY TO YOUR USE OF TREND MICRO SAFESYNC AND SUBSCRIPTION SERVICES. PLEASE PRINT THIS AGREEMENT FOR YOUR RECORDS AND SAVE A COPY ELECTRONICALLY.

You must read and accept this Agreement before you install or use Trend Micro SafeSync. If you are an individual, then you must be at least 18 years old and have attained the age of majority in the state, province or country where you live to enter into this Agreement. If you are acquiring Trend Micro SafeSync on behalf of an entity, then you must be properly authorized to represent that entity and to accept this Agreement on its behalf.

If you are downloading or activating or using Trend Micro SafeSync for trial purposes or purchasing a license to Trend Micro SafeSync, you accept this Agreement by selecting the "I accept the agreement" or similar button or box. If you or the entity you represent does not agree to the terms of this Agreement, select "I do not accept the agreement". Then no Agreement will be formed and you will not be permitted to evaluate, purchase or install and use Trend Micro SafeSync. If you purchased Trend Micro SafeSync from a retail store and do not accept the Agreement, you may return Trend Micro SafeSync in its original package with the purchase receipt to the retail store where purchased within thirty (30) days of purchase for a refund less any restocking fees.

NOTE: SECTIONS 3 AND 20 DISCLAIM ANY WARRANTY OBLIGATIONS. SECTIONS 13 THROUGH 16 SET FORTH IMPORTANT RESTRICTIONS ON THE USE OF TREND MICRO SAFESYNC. SECTION 22 OF THIS AGREEMENT LIMITS TREND MICRO'S LIABILITY. BE SURE TO READ THESE SECTIONS CAREFULLY BEFORE ACCEPTING THE AGREEMENT.

- 1. APPLICABLE AGREEMENT AND TERMS.** This Agreement applies to Trend Micro SafeSync product and services (collectively "Trend Micro SafeSync"). When installing or using Trend Micro SafeSync, you may be prompted to accept the same or another version of Trend Micro's license terms; the terms of the first agreement you accept will apply to your use of Trend Micro SafeSync. All rights in this Agreement are subject to your acceptance of this Agreement. *Paid Subscription licenses:* If you have purchased a subscription license to Trend Micro SafeSync, Sections 1, 2 and 4 through 33 of this Agreement apply to you. *Trial Subscription license:* If you have not purchased a license to Trend Micro SafeSync and are installing Trend Micro SafeSync for trial or evaluation purposes, you are a "trial user" and Sections 1 and 3 through 33 of this Agreement apply to you.
- 2. PAID USE SUBSCRIPTION LICENSE.** Subject to these terms and conditions during your Subscription Term, for each subscription license purchased, Trend Micro grants you a non-exclusive, non-transferable, revocable, personal, non-assignable right to download and install the Trend Micro SafeSync software (a) for consumer version of the product, on up to three (3) personal or handheld computers (each a "Computer") for use by and for all end users in the same household to access the Trend Micro SafeSync service, and (b) for the business versions, on no more than the maximum number of Computers for which license fees have been paid as specified on your invoice, receipt, order confirmation, or other purchase documentation. The Trend Micro SafeSync software may only be installed on one operating system per Computer. Trend Micro may terminate or suspend your subscription to Trend Micro SafeSync if you are using the consumer version of Trend Micro SafeSync for business or network purposes or to backup server data. In such event, this Agreement will automatically terminate.
- 3. TRIAL USE SUBSCRIPTION LICENSE.** If you are a trial user, Trend Micro grants you the right to use Trend Micro SafeSync during your Subscription Term as defined in Section 9 below. At the end of your Subscription Term, this Agreement expires automatically. You may purchase a paid license to Trend Micro SafeSync by selecting the Buy Now option in Trend Micro SafeSync or by contacting an authorized Trend Micro reseller listed on one or more of its sponsored websites, such as www.trendmicro.com ("Sites"). If you do not purchase a license, you agree to destroy all copies of the Trend Micro SafeSync software within fifteen (15) days of the expiration of your Subscription Term. You acknowledge and agree that Trend Micro's policy is to automatically delete all of your backed-up data upon

termination or expiration of your Subscription Term and that it is solely your responsibility to seek another source for your backup needs. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TREND MICRO SAFESYNC AND RELATED DOCUMENTATION USED FOR TRIAL PURPOSES ARE PROVIDED "AS IS" WITHOUT PERFORMANCE PROMISES ("WARRANTIES") OF ANY KIND.

4. **UPDATES.** The Trend Micro SafeSync software may require Updates to work effectively. "Updates" may include new features, bug fixes or the removal of features to the Trend Micro SafeSync software and accompanying documentation. Updates are only available for download and use during your Subscription Term as defined in Section 9 below. Upon download, Updates become "Trend Micro SafeSync" for the purposes of this Agreement. Updates will replace previously licensed parts of the Trend Micro SafeSync software, but will not increase the authorized number of Computers or registered users. Updates may require additional or different license terms that must be accepted before download. Updates will replace previously licensed parts of the Trend Micro SafeSync software. These Updates made available to you will be subject to the terms of this Agreement. Trend Micro will use reasonable efforts to provide notice of material changes to Trend Micro SafeSync or changes to the terms of this Agreement by emailing you at the address provided in your registration and by posting them on Trend Micro's main website, www.trendmicro.com. It is your responsibility to check the website to learn of these modifications. Changes to these Terms, which may be made at Trend Micro's sole and exclusive discretion, will be effective upon acceptance of this Agreement (as described herein) for new subscriptions and effective for all existing users thirty (30) calendar days after the posting of the new terms on Trend Micro's website at www.trendmicro.com. You agree to be bound to the terms of the Agreement, as modified. If you do not agree to the modified Terms you are not permitted to use the Trend Micro SafeSync products and must terminate your subscription immediately.
5. **FEEDBACK.** You may provide feedback to Trend Micro with respect to the Trend Micro SafeSync products or services. Trend Micro may use feedback for any purpose without obligation of any kind. To the extent a license is required under your intellectual property rights to make use of the feedback, you hereby grant Trend Micro an irrevocable, non-exclusive, perpetual, royalty free license to use the feedback in connection with Trend Micro's business, including enhancement of the Trend Micro SafeSync products and services.
6. **ACCESS AND REGISTRATION.** To access and use Trend Micro SafeSync, you agree to provide Trend Micro with accurate and complete information when you register and to keep such information accurate and complete while you have a subscription for Trend Micro SafeSync. You are solely responsible for maintaining the confidentiality of your user name and password and solely responsible and liable for any and all activities that occur with respect to your account. Compromise of your username and password may compromise the security of your backed-up data. You agree to notify Trend Micro immediately if you suspect any unauthorized use of your account or access to your password or account. The credit card holder associated with a Trend Micro SafeSync subscription is the owner of the backed-up data. For trial users, if there is no credit card associated with your subscription, your email address and answers to security questions identify you as the owner of the backed-up data. To receive Updates and other available "Subscription Services" set forth below, you must activate Trend Micro SafeSync and/or register with Trend Micro. These controls help ensure that validly licensed end users receive applicable Subscription Services. Registration requires a valid email address for renewal and other legal notices.
7. **FEES AND RENEWALS.** You agree to pay Trend Micro's then-current and applicable subscription fees for Trend Micro SafeSync products and services, due and payable in advance of provision of the Trend Micro SafeSync services. The fee structure is described on Trend Micro's website. Unless you designate in your account preferences or notify Trend Micro that you do not want your subscription to be auto-renewed, you agree that Trend Micro will automatically renew your subscription to the Trend Micro SafeSync products and services and automatically charge you the then-current renewal fees for such renewed subscription using the credit card associated with your subscription. Trend Micro reserves the right to modify pricing for Trend Micro SafeSync at any time. Trend Micro will use reasonable efforts to provide notice of any changes to the fee structure of Trend Micro SafeSync. You can then decide if you want to continue to use such service. Your continued use of the service after the proposed fee modification has been notified will be considered acceptance of the proposed fee modification. Payment must be made prior to the expiration of the current Subscription Term.
8. **REFUNDS.** You are entitled to a full refund during the first 30 days after your purchase of a subscription to Trend Micro SafeSync should you decide to cancel your subscription. This provision will not apply if you had a previous subscription or trial subscription. You may be entitled to a pro-rata refund based upon the remaining unused period of your Subscription Term if Trend Micro discontinues Trend Micro SafeSync during your Subscription Term. You are not entitled to any refund under any other circumstances. Refunds will only be issued to the same payment source as used for the original payment.
9. **SUBSCRIPTION TERM.** *For paid subscription licenses:* The "Subscription Term" for paid subscription licenses starts on the date you purchase a license, click the "I accept the agreement" button or install, access or use Trend Micro SafeSync, whichever is earlier, and ends 12, 24 or 36 months later, depending on the number of subscription months purchased. You must purchase a Trend Micro SafeSync upgrade or renew your subscription prior to

expiration of your Subscription Term if you want to continue to use Trend Micro SafeSync. Trend Micro SafeSync upgrades and Subscription Term renewals may require additional or different license terms. *For trial use:* The "Subscription Term" for trial use starts on the date you receive the product serial number and (a) ends 30, 60 or 90 days later, depending on the stated or authorized trial period, (b) when Trend Micro SafeSync is no longer made available by Trend Micro or (c) when you have not accessed the Trend Micro server for more than fifteen (15) calendar days.

10. SUBSCRIPTION SERVICES.

A. Updates. During the Subscription Term, registered and trial users are entitled to Updates for use with the Trend Micro SafeSync software.

B. Technical support. During the Subscription Term, registered, validly licensed and trial users are entitled to email and/or web-based technical support during business hours but only in certain limited languages. *Important:* Toll or toll-free telephone support may be available for registered or validly licensed end users of certain products and in some countries only; for details, see www.trendmicro.com/support/consumer.

11. LINKS. The Trend Micro website may contain links to third-party websites or resources. You acknowledge and agree that Trend Micro is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Trend Micro of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

12. LICENSE TO ACCESS FILES. As used in this Agreement, files are those files that you or others upload, download and access through the Trend Micro SafeSync product or service. You are the owner of your files and are solely responsible for your conduct and content of your files, as well as any of the content contained in communications with other users of Trend Micro SafeSync. Trend Micro SafeSync allows you to share some of your files. If you choose to, you can share all or some of your files with the general public or with specific individuals you select. If you decide to share your files, you are giving certain legal rights to those individuals whom you have given access to your folders. After setting up your account and downloading the Trend Micro SafeSync software, you can select the Files you want to sync and/or store. You can change the Files you want to sync or store whenever you want. In order to make the Trend Micro SafeSync service available to you, you agree to grant Trend Micro a limited, non-exclusive, perpetual, fully-paid and royalty-free, sub-licensable and worldwide license: (i) to use, copy, transmit, distribute, store and cache files that you choose to sync and/or store; and (ii) to copy, transmit, publish, and distribute to others the files as you designate. You further represent and warrant that you own the shared files or folders or otherwise have the right to grant the license set forth in the prior sentence. Trend Micro does not claim any ownership rights in your files. You acknowledge that Trend Micro does not have any obligation to monitor the files or user posts that are uploaded, posted, submitted, linked to or otherwise transmitted using the Trend Micro website or services, for any purpose and, as a result, is not responsible for the accuracy, completeness, appropriateness, legality or applicability of the files or anything said, depicted or written by users in their user posts, including without limitation, any information obtained by using the site or services. Trend Micro does not endorse anything contained in the files or user posts or any opinion, recommendation or advice expressed therein and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Trend Micro with respect thereto.

13. EXCESSIVE USE AND OTHER RESTRICTIONS. Your subscription and account to Trend Micro SafeSync and any specific URL associated with your account are for your individual use only. You may not resell your accounts or subscriptions or any account or subscription features. You agree that you will not use Trend Micro SafeSync to disseminate any advertising, promotional materials, or spam. You acknowledge and agree that Trend Micro reserves the right to establish limits on the size of data messages transmitted through Trend Micro SafeSync and/or the size and number of files that can be made available through a public link. In order to protect the experience of all users of Trend Micro SafeSync, Trend Micro also prohibits excessive use, which means usage over a given period far exceeds the average level of usage by users generally. If Trend Micro determines that (a) you have engaged in any excessive use or (b) you are using the consumer version of Trend Micro SafeSync for business, commercial or network purposes, Trend Micro may take remedial action, which may include, but is not limited to, establishing limits on available storage and network capacity, suspension or termination of your subscription and removal of your data from Trend Micro's servers. In its sole discretion, Trend Micro may or may not notify you in advance of any such action.

14. INAPPROPRIATE CONTENT. You agree that you will not use Trend Micro SafeSync to create, copy, store, transmit, share or distribute any files, images, sounds, messages or other material which are obscene (as determined in Trend Micro's sole discretion), harassing, racist, malicious, fraudulent or libelous, contain nudity, violate or infringe the rights of third parties, or expose Trend Micro to any actual or potential civil or criminal liability.

Trend Micro reserves the right in its sole discretion to take any action that it deems necessary if you violate these terms, including suspension or termination of this Agreement and your account

- 15. SERVICE LIMITATIONS.** Trend Micro uses reasonable efforts to make the Trend Micro SafeSync service available at all times. However, Trend Micro does not guarantee availability, shall not have any liability to you for any unavailability or interruptions, and is under no obligation to provide you with maintenance, technical support or updates for Trend Micro SafeSync except in accordance with this Agreement and, if provided, in the manner as determined by Trend Micro from time to time. We reserve the right to suspend access to your account if your use of Trend Micro SafeSync disrupts, impedes or otherwise negatively impacts the operation of our service or use of our service by other customers.
- 16. LICENSE RESTRICTIONS.**
- A. Trend Micro SafeSync is licensed and not sold. Except for the limited license granted in this Agreement, Trend Micro and its suppliers own their respective title, copyright and the trade secret, patent rights and other intellectual property rights in the Trend Micro SafeSync and their respective copyright in the documentation, and reserve all respective rights not expressly granted to you in this Agreement.
- B. You agree that you will not rent, loan, lease or sublicense Trend Micro SafeSync, use components of Trend Micro SafeSync separately or use Trend Micro SafeSync to provide services to others. You also agree not to attempt to reverse engineer, decompile, modify, translate, disassemble, discover the source code of, or create derivative works from, any part of Trend Micro SafeSync. You also agree not to authorize others to undertake any of these prohibited acts. Note that these license restrictions may not be applicable to Third-Party Components, as such term is defined below.
- 17. CONSENT TO ELECTRONIC COMMUNICATIONS.** Trend Micro may be required to send you legal notices and other communications about Trend Micro SafeSync or our use of the information you provide us ("Communications"). Trend Micro will send Communications via in-product notices or via email to your registered email address, or will post Communications on its websites. By accepting this Agreement, you consent to receive all Communications through these electronic means only and acknowledge and demonstrate that you can access Communications on Trend Micro's websites.
- 18. CONSUMER AND DATA PROTECTION.** Trend Micro SafeSync may operate by forwarding certain data ("Stored Data") to Trend Micro owned or controlled servers for storage. As a condition of using Trend Micro SafeSync and by accepting this Agreement You represent and warrant that: (i) You are legally permitted and authorized to access, and to provide Trend Micro with access to, the Stored Data and agree to provide Trend Micro with evidence of such authorization upon request; (ii) You authorize Trend Micro to act as your data processing agent and at your discretion; (iii) you undertake to inform the source of the Stored Data, to the extent required by local law, of the scope and purpose of the service components of Trend Micro SafeSync, which may entail the transfer of Stored Data to servers outside your jurisdiction (including outside the European Union); (iv) you agree that you are responsible for deciding if and how you use Trend Micro SafeSync; and (v) you represent that you will otherwise use Trend Micro SafeSync only in a legal manner. If you are located in the European Union, you agree Trend Micro and you are bound by the « standard contractual clauses for the transfer of personal data to processors established in third countries », issued by the European Commission in a decision dated December 27th 2001 and available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:006:0052:0062:EN:PDF>, which is incorporated hereto by reference. Information relating to data processing and technical and organizational processes are described in the relevant accompanying documentation. In the event of any breach of the representations and warranties in this Section, Trend Micro may with prior notice and without prejudice to its other rights, suspend the performance of Trend Micro SafeSync until You can show to Trend Micro's satisfaction that any such breach has been cured. The use of Trend Micro SafeSync may be subject to data protection laws or regulations in certain jurisdictions. You are responsible for determining how and if you need to comply with those laws or regulations.
- 19. COPYRIGHT POLICY.** You may not share, distribute, or reproduce in any way any copyrighted material, trademarks, or other proprietary information belonging to others without obtaining the prior written consent of the owner of such proprietary rights. It is Trend Micro's policy to terminate this Agreement if you repeatedly infringe the copyright rights of others upon receipt of prompt notification to Trend Micro by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on Trend Micro SafeSync in a way that constitutes copyright infringement, please provide Trend Micro with the following information: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the material that you claim is infringing is located on Trend Micro SafeSync; (d) your address, telephone number, and email address; (e) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and (f) a statement by you, made under penalty of

perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

- 20. DISCLAIMER OF WARRANTIES.** TREND MICRO SAFESYNC MAY CONTAIN OR TREND MICRO MAY PROVIDE TO YOU THIRD PARTY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING, OR YOU MAY OBTAIN THIRD PARTY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING FROM THIRD PARTIES DIRECTLY ("THIRD PARTY COMPONENTS"). TREND MICRO SAFESYNC AND ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. TREND MICRO AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO TREND MICRO SAFESYNC AND THE THIRD PARTY COMPONENTS INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES REGARDING QUIET ENJOYMENT, QUALITY OF INFORMATION, SECURITY, RELIABILITY, TIMELINESS, AVAILABILITY OF BACKED-UP DATA AND PERFORMANCE OF TREND MICRO SAFESYNC. TREND MICRO DOES NOT WARRANT THAT TREND MICRO SAFESYNC OR THIRD PARTY COMPONENTS WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF TREND MICRO SAFESYNC OR THIRD PARTY COMPONENTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN TREND MICRO SAFESYNC OR THIRD PARTY COMPONENTS WILL BE CORRECTED, OR THAT ENCRYPTION ALGORITHMS, ASSOCIATED KEYS AND OTHER SECURITY MEASURES WILL BE SECURE OR EFFECTIVE. YOU UNDERSTAND AND AGREE THAT YOUR INSTALLATION, USE AND ACCESS OF TREND MICRO SAFESYNC AND THIRD PARTY COMPONENTS IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER, SOFTWARE AND THE LOSS OF BACKED-UP DATA THAT RESULTS FROM THE USE THEREOF. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TREND MICRO SHALL CREATE ANY ADDITIONAL TREND MICRO WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF TREND MICRO'S OBLIGATIONS HEREUNDER. YOU HEREBY WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST TREND MICRO AND ITS AFFILIATES, SUPPLIERS AND LICENSORS ARISING OUT OF YOUR USE OF TREND MICRO SAFESYNC AND THIRD PARTY COMPONENTS. TREND MICRO SAFESYNC MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT TREND MICRO SAFESYNC DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, AND OTHER UNDESIRABLE DATA, OR SOFTWARE, OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE YOUR DATA, WEB SITES, COMPUTERS, OR NETWORKS. TREND MICRO SHALL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. YOU ACKNOWLEDGE AND AGREE THAT TREND MICRO WILL NOT BE RESPONSIBLE FOR ANY INCORRECT OR INACCURATE CONTENT UPLOADED TO THE TREND MICRO WEBSITES OR IN CONNECTION WITH TREND MICRO SAFESYNC, WHETHER CAUSED BY USERS OF TREND MICRO SAFESYNC OR BY ANY OF THE EQUIPMENT OR PROGRAMMING ASSOCIATED WITH OR UTILIZED IN TREND MICRO SAFESYNC. YOU ACKNOWLEDGE AND AGREE THAT TREND MICRO IS NOT RESPONSIBLE FOR ANY PROBLEMS OR TECHNICAL MALFUNCTION OF ANY TELEPHONE NETWORK OR LINES, COMPUTER ONLINE SYSTEMS, SERVERS OR PROVIDERS, COMPUTER EQUIPMENT, SOFTWARE, FAILURE OF ANY EMAIL OR PLAYERS DUE TO TECHNICAL PROBLEMS OR TRAFFIC CONGESTION ON THE INTERNET OR ON ANY OF TREND MICRO SAFESYNC SERVICES OR COMBINATION THEREOF. YOU ARE SOLELY RESPONSIBLE FOR THE SECURITY AND INTEGRITY OF YOUR DATA AND SYSTEMS.
- 21. INDEMNIFICATION.** You are solely responsible and liable for your conduct, your data and your backed-up data related to Trend Micro SafeSync. You agree to indemnify, defend and hold Trend Micro, its affiliates, and their respective officers, directors, employees, agents, licensors, and suppliers harmless from and against all claims, liabilities, losses, expenses, damages, and costs, including but not limited to reasonable attorneys' fees, resulting from (i) a violation or breach of this Agreement by you, (ii) any activity related to access or use of your account (including but not limited to negligent or wrongful conduct) by you or any other person accessing or using your account and/or files, or (iii) Trend Micro's authorized use of data, files or other content provided by you or obtained by Trend Micro as authorized by you under this Agreement.
- 22. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TREND MICRO OR ITS AFFILIATES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY COST TO PROCURE SUBSTITUTE SERVICES OR DATA, OR ANY DIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY, OR ANY OTHER DAMAGES, INCLUDING DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOSS OF DATA AND BACKED-UP DATA, BUSINESS INTERRUPTION, OR LOST REVENUES, ARISING OUT OF YOUR USE OR INABILITY TO USE TREND MICRO SAFESYNC PRODUCTS OR YOUR USE OF DATA OR FILES STORED THEREIN, EVEN IF TREND MICRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR OTHERWISE)). IN ANY CASE AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF TREND MICRO AND ITS AFFILIATES, SUPPLIERS AND LICENSORS

FOR ALL DAMAGES OF EVERY KIND AND TYPE (WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) SHALL BE LIMITED TO THE LICENSE FEES PAID BY YOU TO TREND MICRO IN THE TWELVE (12) CALENDAR MONTHS PRIOR TO THE DAMAGES ARISING. IF TREND MICRO SAFESYNC PRODUCTS ARE PROVIDED TO YOU WITHOUT CHARGE, THEN TREND MICRO SHALL HAVE NO LIABILITY TO YOU WHATSOEVER. THE FOREGOING TERMS SET A LIMIT ON THE AMOUNT OF DAMAGES PAYABLE AND ARE NOT INTENDED TO ESTABLISH LIQUIDATED DAMAGES. YOU EXPRESSLY RECOGNIZE AND ACKNOWLEDGE THAT SUCH LIMITATION OF LIABILITY IS AN ESSENTIAL PART OF THIS AGREEMENT AND IS AN ESSENTIAL FACTOR IN ESTABLISHING THE PRICE OF THE TREND MICRO SAFESYNC PRODUCTS AND YOU ACKNOWLEDGE THAT WITHOUT YOUR AGREEMENT TO THESE LIMITATIONS, THE FEES CHARGED FOR THE TREND MICRO SAFESYNC SERVICE WOULD BE HIGHER OR IN THE CASE OF THE TRIAL SUBSCRIPTION, TREND MICRO WOULD NOT BE ABLE TO OFFER YOU THE RIGHT TO EVALUATE THE SERVICE AT NO CHARGE. YOU AGREE THAT NO CLAIM SHALL BE BROUGHT UNLESS YOU HAVE NOTIFIED TREND MICRO WITHIN ONE MONTH OF SUCH CLAIM ARISING. THIS SECTION DOES NOT SEEK TO LIMIT OR EXCLUDE THE LIABILITY OF TREND MICRO OR ITS SUPPLIERS IN THE EVENT OF DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY FOR WHICH IT IS NOT PERMITTED BY LAW TO EXCLUDE.

- 23. CERTAIN EXCEPTIONS.** SOME COUNTRIES, STATES AND PROVINCES, INCLUDING MEMBER STATES OF THE EUROPEAN ECONOMIC AREA, DO NOT ALLOW CERTAIN EXCLUSIONS OR LIMITATIONS OF LIABILITY, SO THE ABOVE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES AND DISCLAIMERS OF WARRANTIES MAY NOT FULLY APPLY TO YOU. YOU MAY HAVE ADDITIONAL RIGHTS AND REMEDIES. SUCH POSSIBLE RIGHTS OR REMEDIES, IF ANY, SHALL NOT BE AFFECTED BY THIS AGREEMENT.
- 24. COMPLIANCE WITH APPLICABLE LAWS.** You agree to comply with any local laws and regulations regarding your right to download, install, import, export or use Trend Micro SafeSync. You acknowledge and agree that your use of Trend Micro SafeSync may be subject to audit to ensure compliance with this Agreement. Trend Micro cooperates with government and law enforcement officials and private parties to enforce and comply with the law. We will disclose any information about you to government or law enforcement officials or private parties as we, in our sole discretion, believe necessary or appropriate to respond to claims and legal process (including but not limited to subpoenas), to protect the property and rights of Trend Micro or a third party, to protect the safety of the public or any person, or to prevent or stop any activity we may consider to be, or to pose a risk of being, illegal, unethical, inappropriate or legally actionable.
- 25. AUDIT.** *For Entity licenses only:* Upon reasonable notice and during regular business hours, Trend Micro shall have the right to audit your use of Trend Micro SafeSync to verify compliance with this Agreement. If the audit reveals unlicensed Computers, you or the entity you represent agree to pay the applicable subscription fees for unlicensed Computers at then current rates within fifteen (15) days of notice. If the fees payable for unlicensed use exceed five percent (5%) of fees actually paid for the audited time period, you agree to reimburse Trend Micro for the costs and expenses of the audit.
- 26. CONFIDENTIALITY/NONDISCLOSURE.** During the term of this Agreement or any trial or evaluation period, you may be exposed to certain information not generally known to the public that Trend Micro considers and treats as confidential and proprietary ("Confidential Information"), including but not limited to product serial numbers, registration keys or activation codes, and information that, due to its character or nature, a reasonable person in a like position and under like circumstances would treat as secret and confidential. During the term of this Agreement and at all times after its termination, You agree (i) to hold the Confidential Information in confidence; (ii) not to disclose Confidential Information to any third parties, except for employees and independent contractors who have a "need to know" and who have signed agreements containing disclosure and use restrictions no less stringent than those in this Section; and (iii) not to use Confidential Information for any purpose except as required to perform under this Agreement.
- 27. TERMINATION.** Trend Micro may terminate or suspend your rights under this Agreement immediately and without notice upon the earlier of the following: (a) non-renewal, cancellation or expiration of the Subscription Term or your failure to pay the applicable fees when due, (b) Trend Micro's discontinuance of the Trend Micro SafeSync product or services, (c) failure to comply with any material term or condition of this Agreement, (d) you are using the Trend Micro SafeSync product or services in a manner not intended or in violation of law, or (e) you no longer consent to electronic Communications. If any third party makes an intellectual property infringement claim relating to Trend Micro SafeSync, Trend Micro reserves the right to immediately terminate your subscription to the affected Trend Micro SafeSync product or services. You have the right to appeal any such termination by contacting your local Trend Micro office which will provide you with the details of the appeals process. Upon such termination, you agree to destroy all copies of the Trend Micro SafeSync software. You may terminate this Agreement at any point by

destroying all copies of the Trend Micro SafeSync software and closing your account. Sections 1 through 4, 16 and 20 through 32 survive any termination of the Agreement.

- 28. EFFECT OF NON-RENEWAL OR TERMINATION.** Upon any non-renewal, termination, or expiration of your subscription to the Trend Micro SafeSync products (i) the license granted herein will automatically and immediately terminate and you will have no further right to possess or use the Trend Micro SafeSync products or services, (ii) the Trend Micro SafeSync products or services may be disabled by Trend Micro without notice to you, and (iii) you will no longer have the right to access or retrieve your backed-up data. You acknowledge and agree that Trend Micro's policy is to automatically and irreversibly delete all of your backed-up data upon non-renewal, termination, or expiration of your subscription to the Trend Micro SafeSync products and that it is solely your responsibility to seek another source for your backup needs. Trend Micro is under no obligation to give you opportunity to download your files prior to termination.
- 29. EXPORT CONTROL.** The Trend Micro SafeSync software is subject to export controls under the U.S. Export Administration Regulations. Therefore, the Trend Micro SafeSync software may not be exported or re-exported to entities within, or residents or citizens of, embargoed countries or countries subject to applicable trade sanctions, nor to prohibited or denied persons or entities without proper government licenses. Information about such restrictions can be found at the following websites: <http://www.treas.gov/offices/enforcement/ofac/> and www.bis.doc.gov/complianceand enforcement/ListsToCheck.htm. As of the Date above, countries embargoed by the U.S. include Cuba, Iran, North Korea, Sudan and Syria. You are responsible for any violation of the U.S. export control laws related to the Trend Micro SafeSync software. By accepting this Agreement, you confirm that you are not a resident or citizen of any country currently embargoed by the U.S. and that you are not otherwise prohibited from receiving the Trend Micro SafeSync software.
- 30. GENERAL.** This Agreement constitutes the entire agreement between you and Trend Micro. Unless your use of Trend Micro SafeSync is subject to an existing, written contract signed by Trend Micro, this Agreement supersedes any prior agreement or understanding, whether written or oral, relating to the subject matter of this Agreement. In the event that any provision of this Agreement is found invalid, that finding will not affect the validity of the remaining parts of this Agreement. The failure to enforce or the waiver by either party of a default or breach of the other party shall not be considered to be a waiver of any subsequent default or breach. If you or Trend Micro cannot perform its obligations in this Agreement because of any act of God, accident, strike, court order, fire, riot, war, failure of third party equipment, or any other cause not within the affected party's reasonable control and that could not be avoided through the exercise of reasonable care and diligence (a "Force Majeure Event"), then the non-performing party will: (i) promptly notify the other party; (ii) take reasonable steps to resume performance as soon as possible; and (iii) not be considered in breach during the duration of the Force Majeure Event. If a Force Majeure Event continues for five (5) or more business days, Trend Micro may terminate your subscription to Trend Micro SafeSync and this Agreement by providing written notice to you. Trend Micro may assign or subcontract some or all of its obligations under this Agreement to qualified third parties or its affiliates and/or subsidiaries, provided that no such assignment or subcontract shall relieve Trend Micro of its obligations under this Agreement. You may not assign this Agreement or any right under this Agreement to any party, including any affiliate, without written approval from Trend Micro; any purported assignment by you shall be null and void.
- 31. GOVERNING LAW/TREND MICRO LICENSING ENTITY.**

North America: If you are located in the United States or Canada, the Licensor is: Trend Micro Incorporated, 10101 N. De Anza Blvd., Cupertino, CA 95014. Fax: (408) 257-2003 and this Agreement is governed by the laws of the State of California, USA.

Europe, Middle East and Africa: If you are located in the United Kingdom, this Agreement is governed by the laws of England and Wales. If you are located in Austria, Germany or Switzerland, this Agreement is governed by the laws of the Federal Republic of Germany. If you are located in France, this Agreement is governed by the laws of France. If you are located in Italy, this Agreement is governed by the laws of Italy. If you are located in Europe, the Licensor is: Trend Micro EMEA Limited, a company incorporated in Ireland under number 364963 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. Fax: +353-21 730 7 ext. 373.

If you are located in Africa or the Middle East or Europe (other than Austria, France, Germany, Italy, Switzerland or the U.K.) (other than in those countries embargoed by the U.S.), the Licensor is: Trend Micro EMEA Limited, a company incorporated in Ireland under number 364963 and having its registered office at IDA Business and Technology Park, Model Farm Road, Cork, Ireland. Fax: +353-21 730 7 ext. 373 and this Agreement is governed by the laws of the Republic of Ireland.

Asia Pacific (other than Japan): If you are located in Australia or New Zealand, the Licensor is: Trend Micro Australia Pty Limited, Suite 302, Level 3, 2-4 Lyon Park Road, North Ryde, New South Wales, 2113, Australia, Fax: +612 9887 2511 and this Agreement is governed by the laws of New South Wales, Australia.

If you are located in Hong Kong, India, Indonesia, Malaysia, the Philippines, Singapore or Thailand, the Licensor is: Trend Taiwan Incorporated, 8F, No.198, Tun-Hwa S. Road, Sec. 2, Taipei 106, Taiwan, Republic of China. If you are located in Hong Kong, this Agreement is governed by the laws of Hong Kong. If you are located in India, this Agreement is governed by the laws of India. If you are located in Indonesia, Malaysia, the Philippines, Singapore, or Thailand, this Agreement is governed by the laws of Singapore.

The United Nations Convention on Contracts for the International Sale of Goods and the conflict of laws provisions of your state or country of residence do not apply to this Agreement under the laws of any country.

32. GOVERNMENT LICENSEES. If the entity on whose behalf you are acquiring the Trend Micro SafeSync software is any unit or agency of the United States Government, then that Government entity acknowledges that the Trend Micro SafeSync software (i) was developed at private expense, (ii) is commercial in nature, (iii) is not in the public domain, and (iv) is "Restricted Computer Software" as that term is defined in Clause 52.227 19 of the Federal Acquisition Regulations (FAR) and is "Commercial Computer Software" as that term is defined in Subpart 227.471 of the Department of Defense Federal Acquisition Regulation Supplement (DFARS). The Government agrees that (i) if the Trend Micro SafeSync software is supplied to the Department of Defense (DoD), the Trend Micro SafeSync software is classified as "Commercial Computer Software" and the Government is acquiring only "restricted rights" in the Trend Micro SafeSync software and its documentation as that term is defined in Clause 252.227 7013(c)(1) of the DFARS, and (ii) if the Trend Micro SafeSync software is supplied to any unit or agency of the United States Government other than DoD, the Government's rights in the Trend Micro SafeSync software and its documentation will be as defined in Clause 52.227 19(c)(2) of the FAR.

33. QUESTIONS. If you have a question about Trend Micro SafeSync, visit: www.trendmicro.com. Direct all questions about this Agreement to: legalnotice@trendmicro.com.

TREND MICRO SAFESYNC IS PROTECTED BY INTELLECTUAL PROPERTY LAWS AND INTERNATIONAL TREATY PROVISIONS. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.
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