

## TRELLIX PURCHASE ORDER TERMS AND CONDITIONS

### 1. Purchase Order Terms.

- 1.1 These Purchase Order Terms and Conditions, including all referenced attachments (collectively, “**PO Terms**”) govern Buyer’s purchase of Products and Services from Supplier as described in the PO, if Buyer and Supplier do not otherwise have Master Purchase Agreement in place. If Buyer and Supplier do have a valid Master Purchase Agreement, the terms of that agreement shall govern Buyer’s purchase of Products/Services from Supplier.
- 1.2 These PO Terms are incorporated into the PO and prevail over any additional or different terms in Supplier’s quotation, invoice, or other Supplier pre-printed forms. Supplier’s electronic or written acceptance or acknowledgement of a PO or commencement of performance of the PO shall constitute Supplier’s acceptance of these PO Terms. Buyer limits its acceptance of any offer from Supplier to these PO Terms and rejects any different or additional terms in any other communications between the Parties.
- 1.3 Modifications or additions to these PO Terms, to be effective, must be made in writing and signed by Buyer. **No auto renewal terms of any kind shall be deemed incorporated into the PO or these PO Terms.**
- 1.4 Supplier acknowledges that it is providing Products on a non-exclusive basis, and nothing contained in the PO shall be interpreted as guaranteeing a certain volume of purchases by Buyer from Supplier. Buyer reserves the right to purchase the Products from third parties that supply similar products without notice or liability to Supplier.
- 1.5 **Definitions.** Capitalized terms used in these PO Terms have the meanings ascribed to them, as set forth in *Attachment 1*.

### 2. Delivery and Notice of Delay.

- 2.1 Supplier shall deliver the Products/Services per the delivery schedule in the PO, and Supplier’s failure to do so, if unexecuted, shall be considered a material breach.
- 2.2 Supplier shall notify Buyer in writing immediately of any actual or potential delay in the performance of the PO. Such notice shall include a proposed revised schedule, but such notice and proposal or Buyer’s receipt or acceptance thereof, shall not constitute a waiver of Buyer’s rights and remedies hereunder. Buyer reserves the right to refuse or return, at Supplier’s risk and expense, shipments made in excess of the PO or in advance of required schedules, or to defer payment on advance deliveries until the scheduled delivery dates.
- 2.2 Buyer may reschedule a PO in whole or in part prior to the date of delivery of Products or commencement of performance of Services at no additional charge. Buyer may place any portion of a PO on hold by notice that shall take effect immediately upon receipt. POs placed on hold will be rescheduled or terminated (in accordance with the termination terms of these PO Terms), within a reasonable time.

### **3. Shipping; Risk of Loss.**

- 3.1 All Products shall be prepared for shipment in a manner that: (a) follows good commercial practice; (b) is acceptable to common carriers for shipment at the lowest rate; and (c) is adequate to ensure safe arrival.
- 3.2 Supplier shall mark all containers with necessary lifting, handling, and shipping information, PO number, date of shipment, and the names of Buyer and Supplier. Supplier shall bear the cost of shipping and risk of loss of all defective or non-conforming Products while in transit. Title and risk of loss shall pass to Buyer or Buyer's agent(s) upon delivery of Products to Buyer's dock.

### **4. Inspection.**

- 4.1 Products and Services may be subject to Buyer's inspect and test at reasonable times and places before, during, and after delivery. Buyer may require Supplier to repair, replace or reimburse the purchase price of rejected Products. Buyer may accept Products and upon discovery of nonconformance, may reject or keep and rework any such Products not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Buyer shall be at Seller's expense.
- 4.2 Buyer's acceptance of Products or Services shall not be deemed to diminish Buyer's rights or be final or binding if latent defects, fraud, or misrepresentations on the part of Supplier exists.
- 4.3 Neither Buyer's inspection nor failure to inspect shall relieve Supplier of any responsibility to perform the PO. The risk of loss of, or damage to, nonconforming Products remains with Supplier until cure or acceptance.

### **5. Invoicing and Payment.**

- 5.1 Buyer shall make payments within sixty (60) days from Buyer's receipt of the proper original invoice or Buyer's receipt of the Products, whichever is later.
- 5.2 Payment is made when Buyer's check is mailed; credit card number is provided to Supplier, or EDI funds transfer is initiated. Supplier will not submit an invoice for Products prior to the shipment date of such Products or completion of invoiced Services.
- 5.3 Original invoices or packing lists must be submitted to the Buyer's Accounts Payable Department (refer to the mailbox included in the PO comments) and must include: the PO number, line-item number, part number, complete bill to address, description of Products/Services, quantities, unit price and extended totals.
- 5.4 All expenses submitted to Buyer for reimbursement shall be in compliance with Buyer's then-current written expense reimbursement policies, and must be without markup, and net of any reclaimable Value Added Taxes ("VAT") incurred on such expenses. Buyer's payment shall not constitute acceptance.
- 5.5 Supplier agrees to invoice Buyer no later than one hundred eighty (180) days after shipment of Products or making Software available for download. Buyer will not be obligated to make payment against any invoices submitted after such 180-day period. Buyer reserves the right to request separate billing in certain jurisdictions.

## **6. Taxes.**

- 6.1 Supplier is responsible for charging and collecting (at the time of invoice or delivery) all applicable sales, use and/or excise taxes, and is solely responsible for the remittance of said taxes, all tax filings and required payments to be made to any tax authority including, but not limited to, national insurance contributions, income tax and VAT liability.
- 6.2 Buyer will not reimburse Supplier for any tax assessments, penalties or interest charges arising from Supplier's failure to fulfill its responsibility for collection of such taxes from Buyer.
- 6.3 If Buyer is prohibited by law from making gross payments to Supplier and is required to withhold taxes, Buyer will duly withhold such taxes in accordance with local tax requirements and pay to Supplier the remaining net amount after taxes have been withheld. Buyer will remit such taxes withheld to the appropriate taxing authority and promptly furnish to Supplier an official tax receipt or other evidence of taxes withheld and remitted. Buyer will not reimburse Supplier for the amount of such taxes withheld. However, if Supplier obtains any certificate from tax authorities for nil or lower withholding tax to be applied on remittances or payments made by Buyer to Supplier and Supplier provides such certificate to Buyer, then Buyer will withhold taxes in accordance with such certificate from the date of receipt of such certificate from Supplier.

## **7. Term and Termination.**

- 7.1 These PO Terms shall remain in effect until Buyer has accepted all the Products/Services identified in the PO, or until terminated as provided herein.
- 7.2 Buyer may terminate these PO Terms, or any part thereof, for its convenience with ten (10) days prior written notice to Supplier. In the event of a partial termination, Seller is not excused from performance of the non-terminated balance of work under the PO.
- 7.3 Either party may terminate these PO Terms if the other party breaches a material term of these PO Terms and fails to cure such breach within thirty (30) days of receipt of written notice of breach.
- 7.4 Buyer may also terminate these PO Terms and any PO immediately if Supplier:
- (a) breaches Sections 12 (Confidentiality), 18 (Compliance with Anti-Corruption Laws), 19 (Export/Import Controls); or
  - (b) becomes or is declared insolvent or bankrupt, enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations; is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver, or makes an assignment for the benefit of all or substantially all its creditors;
- 7.5 **Effect of Termination.** Upon termination of these PO Terms and any PO, Supplier shall:
- (a) stop work immediately upon receipt of Buyer's notice;

- (b) provide any undelivered work in progress to Buyer promptly, and all rights and licenses granted by Buyer to Supplier in connection with the work to be performed shall automatically terminate; and
  - (c) return or delete from its systems all copies of Buyer Material and Buyer Confidential Information that Supplier has in its possession. Upon Buyer's request, Supplier shall provide written certification that it has either returned or deleted all Customer Material and Confidential Information.
- 7.6 In the event of Seller's material breach, Buyer may exercise any or all rights and remedies available at both law, including, without limitation, those set forth in Article 2 of the Uniform Commercial Code, or in equity.
- 7.7 **Records.** Supplier shall maintain business records of all Products and Services provided under these PO Terms for six (6) years from the date of final payment.

## **8. Force Majeure.**

- 8.1 Neither party shall be liable for any delay in performing, or for failing to perform, its obligations under these PO Terms due to causes beyond its reasonable control such as acts of God, fire, flood, theft, war, riot, strikes, epidemics, pandemics, or civil disturbances, terrorism, embargoes or acts of government in its sovereign or contractual capacity, quarantine restrictions, and freight embargoes.
- 8.2 If delivery is to be delayed by such contingencies, Supplier shall immediately notify Buyer in writing and Buyer may either (a) extend time of performance, or (b) terminate the uncompleted portion of the PO at no cost to Buyer.

## **9. Genuine Products.**

Supplier shall purchase Products from either the OEM or an authorized distributor or reseller for the OEM. The Products shall not be, or contain, any Counterfeit Items. Upon Buyer's request, Seller shall provide Buyer certificates of conformance with respect to the Products delivered. Buyer shall not be liable for payment to Seller of the price of any Suspect Counterfeit Items until determined to be authentic.

## **10. Warranty.**

- 10.1 **Product Warranty.** Supplier warrants that the Products:
- (a) shall be new, genuine, of the grade and quality specified, free from defects in workmanship, material, and design, and conform to all descriptions, and specifications furnished or published by Supplier;
  - (b) shall not contain any disabling code and are free from any viruses, Trojan horse or other software code or routine designed to damage, destroy, or alter any software or hardware or that would reveal, damage, destroy or alter any data or disable a computer program automatically; or permit unauthorized access to any software or hardware; and
  - (c) shall not contain any third-party software (including any that may be considered free or open-source software) that: (i) may require any software to be published, accessed, or otherwise made available without the consent of Buyer; or (ii) may require distribution, copying or modification of any software free of charge.

- 10.2 **Service Warranty.** Seller warrants that the Services shall be provided in a professional and workmanlike consistent with industry standards. This Services warranty shall apply for twelve (12) months after the Services have been fully performed.
- 10.3 **Warranty Remedies.** If the Products or Services fail to meet the above warranties in Sections 10.1 and 10.2, at Buyer's option, Supplier shall promptly repair, replace, or in the case of Services, promptly reperform at no cost the Services, or refund the amount paid for the defective Products and/or Services. Buyer's return to Seller of defective Products and redelivery to Buyer of any repaired or replaced Products, shall be at Seller's expense. Supplier shall bear the cost of shipping and risk of loss of all defective or non-conforming Products while in transit.

## **11. Buyer's Material.**

- 11.1 Any specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment, and other material furnished or paid for by Buyer ("Buyer's Material") shall:
- (a) remain or become Buyer's property;
  - (b) be used by Supplier only for the Supplier's performance of work under the PO;
  - (c) be clearly marked as Buyer's property and segregated when not in use;
  - (d) be kept in good working condition at Supplier's expense; and
  - (e) be returned to Buyer promptly upon request, or upon termination of the PO or these PO Terms, whichever occurs first.
- 11.2 Seller shall be responsible for all loss or damage to Buyer's Material in its possession and control, except for normal wear and tear. Within two working days, Buyer shall notify Buyer of any loss, theft, damage, or destruction of Buyer's Material.

## **12. Confidentiality.**

- 12.1 If the Buyer and Seller have executed an NDA, the terms of the NDA shall govern the disclosure of any confidential information (as defined therein) between them. The following provisions shall apply if there is no NDA between the Parties currently in effect:
- 12.2 All Confidential Information (as defined herein) shall remain the sole property of the Disclosing Party and shall be maintained in strict confidence and protected by the Receiving Party in the same manner and with the same degree of care (but in no event less than a reasonable degree of care) as the Receiving Party uses in protecting its own information of a confidential nature.
- 12.3 Supplier shall not use such Confidential Information except as necessary to perform the Services. Supplier shall not sell, transfer, publish, disclose, display, or otherwise make available any Confidential Information or any Deliverable to any third-party, and shall take all reasonable steps to prevent Supplier's personnel from doing the same. Supplier shall limit disclosure of Confidential Information to Supplier's personnel on a need-to-know basis.

- 12.4 The Receiving Party will immediately notify the Disclosing Party if Confidential Information of the Disclosing Party is used, distributed, or communicated in a manner not authorized under this Agreement.
- 12.5 Neither party will disclose the existence of this PO, nor any of its details or the existence of the relationship created by this PO, to any third-party without the specific written consent of the other party.
- 12.6 The Confidentiality provisions of this Section 12 do not apply to information:
- (a) generally available to, or known by, the public prior to the time of disclosure by the Disclosing Party;
  - (b) that becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party;
  - (c) which can be documented as previously known by the Receiving Party prior to disclosure thereof by the Disclosing Party;
  - (d) disclosed to the Receiving Party by a third-party having no confidentiality obligations with respect to such information;
  - (e) required by law to be disclosed by the Receiving Party, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure;
  - (f) that is independently developed by the Receiving Party without breach of any confidentiality obligations; or
  - (g) to the extent the Receiving Party has obtained written consent of the Disclosing Party, but only to the extent expressly authorized in such written consent.
- 12.7 The Receiving Party will make copies of the Confidential Information only as needed. Upon the Disclosing Party's request, the Receiving Party will promptly return all tangible Confidential Information and all copies thereof, delete all electronically stored Confidential Information, and deliver to the Disclosing Party written certification of such return and deletion, except that the Receiving Party may retain one copy for archival purposes only.

### **13. Intellectual Property ("IP") Indemnification.**

- 13.1 Supplier shall defend, indemnify, and hold Buyer, its subsidiaries, agents, directors, officers, employees, consultants, and subcontractors ("**Buyer Indemnified Parties**") harmless from any costs, expenses (including reasonable attorneys' fees), losses, damages, or liabilities incurred as a result of actual or alleged third-party infringement of any patent, copyright, trade secret, trademark, mask work, or other intellectual property right arising out of the use of Product(s) or Services.
- 13.2 Buyer shall promptly notify Supplier in writing of any such claim or demand.
- 13.3 If an injunction issues as a result of any claim or action, Supplier agrees at its expense and Buyer's option to either: (a) procure for Buyer the right to continue using Products or Services; (b) replace them with non-infringing Products or

Services; (c) modify them so they become non-infringing; or (d) refund to Buyer the amount paid for any infringing Products or Services.

#### **14. General Indemnity.**

- 14.1 Supplier shall, to the fullest extent permitted by law, protect, defend, indemnify, and hold Buyer Indemnified Parties harmless from and against any and all claims, liabilities, demands, penalties, forfeitures, suits, judgments, and the associated costs and expenses (including attorney's fees), which Buyer may hereafter incur, become responsible for, or pay out as a result of: violations by Supplier of applicable laws including those specifically referenced in these PO Terms, death or personal injury (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment, and any cleanup costs in connection therewith, caused in whole or in part by any negligent or willful acts, errors, or omissions by Supplier, its employees, officers, agents, representatives, or subcontractors while performing Services under these PO Terms.
- 14.2 The foregoing indemnity shall include any claim made or threatened, whether by legal proceedings or otherwise, against Buyer by a third-party on the grounds that any person supplied or engaged by Supplier is or was deemed to be an employee of Buyer.
- 14.3 Supplier further agrees that if Buyer is required by law or otherwise to include Supplier or any Supplier's employees in any of Buyer's benefit plans or provide severance benefits under law, Supplier shall reimburse Buyer for the actual amount required to be paid, or the fair market value of any benefit received by Supplier or Supplier's employees arising from work performed under this PO.

#### **15. Hazardous Material.**

- 15.1 If Products or any Services provided hereunder include hazardous material, Supplier represents and warrants that Supplier and its personnel providing Services to Buyer understand the nature of and hazards associated with same, including the handling, transportation, and use of such hazardous material, as applicable to Supplier.
- 15.2 Prior to causing hazardous material to be on Buyer's property, Supplier shall obtain written approval from Buyer's Facility Management (email approval will suffice).
- 15.3 Supplier will be responsible for, and indemnify Buyer from, any liability resulting from the actions of Supplier or its contractors in connection with: (a) providing such hazardous material to Buyer; and/or (b) the use of such hazardous material in providing Services to Buyer. Supplier will timely provide Buyer with material safety data sheets and any other documentation reasonably necessary to enable Buyer to comply with applicable laws and regulations.

#### **16. Proprietary Rights.**

- 16.1 Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in the PO, all specifications, information, data, drawings, software, and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.

- 16.2 Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in the PO, all specifications, information, data, drawings, software and other items which are: (i) supplied to Seller by Buyer; or (ii) obtained or developed by Seller in the performance of the PO or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing Products or Services to Buyer pursuant to the PO, and shall not be disclosed to any third-party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of the PO or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of the PO.
- 16.3 Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in the PO, any invention or intellectual property first made or conceived by Seller in the performance of the PO or which is derived from or based on the use of information supplied by Buyer (collectively, the "Foreground IP") shall be considered to be the Buyer's property. Seller hereby assigns its rights in the Foreground IP to Buyer and shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in the PO, any work performed pursuant to this PO which includes any copyright interest shall be considered a "work made for hire". To the extent any of such works do not qualify as a "work made for hire," Seller hereby assigns to Buyer all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.

## **17. Compliance With Laws; Other.**

- 17.1 Supplier shall comply with all applicable national, state, provincial and local laws and regulations governing the manufacture, transportation, import, export, and/or sale of the Products and/or the performance of Services to Buyer under these PO Terms. In carrying out its obligations under the PO, Supplier further agrees to act consistently with the Trellix Supplier Code of Conduct, which is incorporated herein.
- 17.2 Supplier agrees to abide by all Buyer's rules and regulations while on Buyer's premises or performing Services, including, but not limited to, safety, drug-free work environment, health and hazardous material management rules, and rules prohibiting misconduct on Buyer's premises including, but not limited to, use of physical aggression against persons or property, harassment, and theft.
- 17.3 **Products/Services In Support of a U.S. Government Contract.** For any PO that is placed in support of, and charged to, a U.S. Government prime contract or higher tier subcontract, the terms set forth in the document entitled "Trellix Products/Services in Support of a U.S. Government Contract" shall also apply and are incorporated into the PO Terms.



## **18. Compliance With Anti-Corruption Laws.**

- 18.1 Supplier agrees to comply with all applicable anti-bribery and anti-corruption laws, including, but not limited to, the United States Foreign Corrupt Practices Act (“FCPA”), which prohibits the offering, paying, or promising to pay anything of value, directly or indirectly, to a government official (which includes officers of a government, persons officially acting on behalf of a government, employees of a government corporation, officials of a political party, and candidates for political office) for the purpose of: (1) improperly influencing an act or decision of the government official in his or her official capacity; (2) inducing the government official to do or omit to do any act in violation of the lawful duty of such official; (3) securing an improper advantage; or (4) improperly inducing the government official to use his influence to affect or influence any act or decision of a government or instrumentality, in order to affect or influence any act or decision of a government or instrumentality, in order to assist Buyer or any third-party, to obtain or retain business.
- 18.2 Seller shall maintain books and records which accurately and fairly reflect all the transactions related to Seller’s provisioning of Products/Services to Buyer under a PO (including, but not limited to, the Seller’s price quotations and invoice price).
- 18.3 In the event that Buyer believes, in good faith, that Supplier has breached its obligations in this Section 18, Buyer shall have the right to immediately terminate these PO Terms and any PO(s) between the Buyer and Supplier.

## **19. Export/Import Controls.**

- 19.1 Neither Supplier nor any of its subsidiaries will export/re-export any technical data, process, product, or service, directly or indirectly (including the release of controlled technology to foreign nationals from controlled countries) to any country for which the United States Government or any agency thereof requires an export license or other government approval without first obtaining such license.
- 19.2 For Services provided in the U.S., Supplier agrees not to provide foreign nationals (non-U.S. citizens or U.S. permanent residents) as employees or contingent workers for work on any Buyer site unless that foreign national is covered under a valid U.S. Export License or is not exposed to controlled technology.
- 19.3 For Services performed outside of the U.S., Supplier agrees not to provide foreign nationals as employees or contractors for work on any Buyer site unless the foreign national (a) is a citizen or permanent resident of the country of that Buyer site; (b) is covered under a valid U.S. Export Authorization; (c) is not exposed to controlled technology; or (d) does not require a valid U.S. Export License.
- 19.4 Seller warrants that neither Seller, nor any parent, subsidiary, or affiliate is listed on any Restricted Party List of an agency of the U.S. Government, any applicable non-U.S. Government, or international organization or any applicable state, local government nor are their export privileges denied, suspended, or revoked.

- 19.5 Unless the PO provides otherwise, for any Products imported into the United States, Seller shall obtain all necessary import and/or export authorizations. Seller shall indemnify Buyer for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Buyer, in connection with any violations of non-U.S. or U.S. export or import control laws and regulations by Seller, its officers, employees, agents, or its subcontractors at any tier.
- 19.6 **Customs Clearance.** Upon Buyer's request, Supplier will promptly (at Supplier's sole cost) provide Buyer with a statement of origin for all Products and with applicable customs documentation for Products wholly or partially manufactured outside of the country of import.

## **20. Privacy and Security.**

- 20.1 Supplier shall comply with all laws, regulations, orders, or directives designed to protect Personal Data and Supplier warrants that it shall only use Personal Data collected hereunder to the extent required to perform its obligations. Supplier may not, under any circumstances, sell, trade, or rent all or any portion of the Personal Data collected in connection with a PO.
- 20.2 Supplier will not provide third parties (including, without limitation, Supplier's subcontractors) with access to Personal Data for any purpose without Buyer's prior written consent. If Supplier is authorized by Buyer to allow access to any Personal Data to a Supplier subcontractor, such subcontractor shall agree to protect and process Personal Data under written terms no less privacy protective than those contained in the PO. Furthermore, Buyer reserves the right, at its sole option, to enter into additional confidentiality agreements directly with such subcontractors in order to ensure adequate protection of Personal Data or comply with any applicable law.
- 20.3 These PO Terms do not authorize the transfer or processing of any Personal Data of individuals residing in the European Economic Area or Switzerland without the acceptance of the privacy and security requirements set forth in Buyer's Data Processing and Security Agreement ("**DPSA**"), which is incorporated herein. Supplier shall strictly limit the disclosure of Personal Data to only those Supplier employees who need to know and only to the extent necessary for the performance of its obligations under this PO. Supplier shall ensure that its employees processing Personal Data have received timely and appropriate privacy training and are bound by confidentiality obligations not less restrictive than those contained in the PO.
- 20.4 Supplier shall maintain appropriate administrative, technical, and organizational controls to safeguard Personal Data against loss, destruction, improper use, or unauthorized access. Should any Personal Data become subject to such destruction, use or access, Supplier will promptly notify Buyer. Buyer may conduct an audit of Supplier's controls referenced in this paragraph as required to safeguard the Personal Data.
- 20.5 Supplier shall permanently delete any and all Personal Data upon Buyer's request or, in the absence of such a request, within thirty (30) days after the Personal Data

is no longer being actively used in fulfilling Supplier's obligations to Buyer under this PO.

## **21. Business Ethics.**

By accepting Buyer's PO, Seller represents that it has not participated in any conduct in connection with the PO that violates Trellix's Supplier Code of Conduct, or alternatively, the equivalent written business ethics and conduct of the Seller. Buyer may cancel the PO, and terminate these PO Terms, with no further obligation to Seller, if Buyer determines, in good faith, that Seller is in violation of the applicable ethics code.

## **22. LIMITATION OF LIABILITY.**

UNDER NO CIRCUMSTANCES IS BUYER LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, OR LOSS OF PERSONNEL SALARIES IN CONNECTION WITH THIS PURCHASE ORDER. BUYER'S TOTAL CUMULATIVE LIABILITY FOR DIRECT DAMAGES UNDER THIS PURCHASE ORDER SHALL BE LIMITED TO THE FEES PAID TO SUPPLIER FOR THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM UNDER THE PURCHASE ORDER.

## **23. General.**

- 23.1 **Insurance.** Supplier shall maintain the levels of insurance coverage set forth in *Attachment 2* during the term of these PO Terms.
- 23.2 **Publicity.** Neither party may use the other party's name or trademarks in any type of advertisement material, web sites, press releases, interviews, articles, brochures, business cards, project reference or client listings without the other party's prior written consent.
- 23.3 **Waiver.** No waiver of any breach hereof or delay in enforcing the PO shall be held to be a waiver of any other or subsequent breach. If any provision of the PO is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall modify the PO to the minimum extent necessary to be valid and enforceable, or if it cannot be made valid and enforceable, the court will sever and delete the provision. Such a determination will not affect the validity of the remaining provisions.
- 23.4 **Assignment.** Buyer may assign or delegate these PO Terms to any Affiliate, without Supplier's prior written consent. Supplier may not assign or delegate its rights and obligations under these PO Terms or the PO without Buyer's prior written consent. For purposes of this Assignment section, the acquisition, merger, consolidation, or change in control of Supplier or any assignment by operation of law shall be deemed an assignment that requires Buyer's written consent. Buyer may terminate the PO for cause should Supplier attempt to make an unauthorized assignment of any right or obligation arising hereunder.
- 23.5 **Applicable Law/Venue.** The validity, performance and interpretation of these PO Terms and any PO shall be governed by and construed in accordance with the laws of the jurisdiction and the courts as set forth in the chart immediately below:

Name of Buyer Entity	Choice of Law	Venue
<b>Musarubra US LLC</b> , and Affiliates in North, Central and South America	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California
<b>Trellix Public Sector LLC</b>	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California
<b>Musarubra Ireland Limited</b> , and Affiliates in Europe, the Middle East and Africa	Laws of the Republic of Ireland	Courts of Dublin, Ireland
<b>Musarubra Japan KK</b>	Laws of Japan	Tokyo District Court of Japan
<b>Musarubra Singapore Pte Ltd.</b> , and Affiliates in Asia Pacific other than in Australia, and Japan	Laws of the Republic of Singapore	Courts of the Republic of Singapore
<b>Musarubra Australia Pty Ltd.</b>	Laws of Australia	Courts of New South Wales, Australia
<b>McAfee (Beijing) Security Software Co. Ltd.</b>	Laws of the Republic of Singapore	Courts of the Republic of Singapore

The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this PO.

- 23.6 **TUPE.** The parties agree that the Acquired Rights Directive 98/50/EC (TUPE) shall **not** apply to this PO. In the unlikely event that TUPE is deemed to apply, Supplier shall be responsible for the transfer of personnel falling within the application of TUPE, and Supplier shall be responsible for the costs of the parties for the application of TUPE. Supplier shall further keep Buyer indemnified in full in respect of any and all liabilities, loss, damage, cost, or expense sustained by Buyer as a result of the application of TUPE under the PO.
- 23.7 **Electronic Transactions.** The Buyer and Seller agree to accept electronic records and electronic signatures relating to transactions contemplated by the PO.

- 23.8 **Independent Contractor.** In performing under the PO, Supplier is an independent contractor, and its personnel and other representatives shall not act as nor be agents or employees of Buyer. Neither these PO Terms nor any PO is intended to create any partnership, franchise, joint venture, agency, or employment between the parties.
- 23.9 **Order Of Precedence.** If there is any conflict or inconsistency between these PO Terms and any other document, the following order of precedence will apply: (a) these PO Terms; (b) any statement of work duly executed by both parties; and (c) any fully executed addenda to the PO.
- 23.10 **Survival.** The following provisions shall survive the termination or expiration of these PO Terms, and PO(s): 4 (Inspection), 5 (Invoicing and Payment), 6 (Taxes), 7.5 (Effect of Termination), 7.6, 7.7 (Records), 9 (Genuine Products), 10 (Warranty), 11 (Buyer's Material), 12 (Confidentiality), 13 (IP Indemnification), 14 (General Indemnity), 15 (Hazardous Material), 16 (Proprietary Rights), 19.5 (Export/Import Controls), 20 (Privacy and Security), 22 (Limitation of Liability), 23 (General). In addition, any right or legal obligation of a party that by its express term or nature would reasonably extend beyond the term of the PO shall survive for such extended period.
- 23.11 **Notices.** All notices and consents required or permitted to be given under this PO shall be in writing and sent to recipient's address specified in the PO. Any notice shall be treated as having been delivered: (i) when received if delivered by hand; (ii) the next business day after being sent by pre-paid, nationally recognized, overnight air courier with tracking capabilities; or (iii) five (5) business days after posting if sent by registered first class mail, return receipt required, postage prepaid.
- 23.12 **Entire Agreement.** These PO Terms (including the attachments) and any written amendments, shall constitute the entire agreement between the parties with respect to the subject matter herein and shall replace all prior promises or understandings, written or oral. These Purchase Order Terms and Conditions may not be amended except by a written document signed by each party through its authorized representative.

*-Attachment 1 (Definitions) follows this page-*

## Attachment 1 - DEFINITIONS

**Acceptance** means Supplier's (a) acknowledgment of a Purchase Order; (b) commencement of the Services; (c) shipment of Product(s) to be purchased; (d) failure to raise any issues with a Purchase Order within forty-eight (48) hours of receipt; or (e) acceptance of payment from Buyer (in any form) for Product(s) to be purchased, whichever occurs first.

**Affiliate** means as used herein, any entity that Controls, is Controlled by, is under common Control with a Party, or is Controlled by the same parent entity as a Party, where "**Control**" or "**Controlled**" means direct or indirect ownership, through one or more intermediaries of more than 50% of an entity's voting capital or other voting rights.

**Buyer** means one of the legal entities listed in Section 23.5 above, or any other Buyer Affiliate, as identified on the PO.

**Buyer Information** means Buyer's Personal Data, end user data, financial and banking data, Confidential Information, and any other non-public, proprietary information that may be provided to or otherwise obtained by Supplier in connection with this Purchase Order.

**Confidential Information** means all non-public, confidential, proprietary and trade secret information including, without limitation, all trade secrets, know-how, methods, designs, drawings, schematics, specifications, documentation, network and security configurations, network architecture, pricing, forecasts, sales and other financial results, accounting and tax information, product and service information, business roadmaps, studies, reports, supplier and vendor information and lists, customer and prospect lists, analyses, compilations, interpretations and notes, customer or employee personally identifiable information, and any other documents, material, and business or technical information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**"), whether disclosed orally or disclosed or accessed in written or electronic form, which is identified as confidential, or which can reasonably be considered confidential due to its nature or the circumstances surrounding disclosure.

**Counterfeit Items** means an unlawful or unauthorized reproduction, substitution, alteration or the false identification of grade, serial number, lot number, data code or performance characteristic, that has been knowingly mismarked, misidentified or otherwise misrepresented to be an authentic, unmodified item from the OEM or its authorized distributor/reseller.

**Data Processing and Security Agreement** or (**DPSA**) means the Trellix "Data Processing and Security Agreement" made available on the Trellix Supplier Portal.

**Master Purchase Agreement** means an existing written agreement executed by the Parties, through each of their authorized representatives, that governs the purchase of Seller's Products and/or Services.

**OEM** means original equipment manufacturer.

**Personal Data** means any information that can be used, alone or in combination with other data, to identify an individual or is otherwise identified as "Personal Data" under applicable data protection laws.

**Product(s)** mean any hardware, firmware and/or Software provided by Supplier to Buyer.

**Purchase Order** or (**PO**) means, a PO issued either electronically or in writing by a Buyer representative and any associated Statements of Work or addenda executed by Buyer and Supplier, that call for Supplier to ship, provide, or cancel, a specific quantity of Products or perform Services to a specified schedule.

**Service(s)** means any work to be performed by Supplier which may include, but are not limited to, development, training, consulting, support, and/or maintenance, as described on a PO.

**Software** means the software or firmware, licensed by the Supplier or its authorized partners, to Buyer, including, but not limited to, any updates, upgrades, modifications, enhancements, subsequent versions, or releases.

**Statement of Work** or (**SOW**) means a written document describing the Services to be performed by Supplier under this PO as set forth in an addendum or other document(s) executed by the parties and referencing this PO.

**Supplier** means the party receiving a PO from Buyer.

**Suspect Counterfeit Items** means an item for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the items are authentic.

**Trellix Products/Services in Support of a U.S. Government Contract** means the document with that title, that Trellix makes available on the Trellix Supplier Portal.

**Trellix Supplier Portal** or **Supplier Portal** means the Trellix Supplier Portal at: <https://www.trellix.com/en-us/about/legal/supplier-portal.html>.

*-Attachment 2 follows this page-*

## Attachment 2 – INSURANCE REQUIREMENTS

1. Without limiting or qualifying Supplier's liabilities, obligations, or indemnities otherwise assumed by Supplier pursuant to this PO, Supplier shall maintain, at its sole cost and expense, with companies of an AM BEST rating A-VIII, of the following:
  - Commercial General Liability** insurance covering all operations of the Supplier, including, but not limited to, products/completed operations and blanket contractual liability specifically covering the indemnification provisions herein, against claims for personal and bodily injury and property damage with a combined single limit of two million dollars (\$2,000,000 USD);
  - Automobile Liability Insurance** covering bodily injury and property damage liability arising out of the use by or on behalf of the Supplier, its agents, and employees of any owned, non-owned or hired automobile with combined single limits not less than one million dollars (\$1,000,000 USD);
  - Employee Theft Policy** covering loss of money, securities and other property for which Supplier is legally liable or which is held by Supplier in any capacity, whether or not Supplier is liable, caused by theft of an employee acting alone or collusion with others subject to a minimum limitation of one million dollars (\$1,000,000 USD); and
  - Property Insurance** covering all real and personal property and inventory, including Supplier products, for "all risks" of physical loss or damage, including business interruption and boiler and machinery breakdown, subject to a minimum limitation of one million dollars (\$1,000,000 USD).
2. Supplier's insurance shall be primary, and any applicable insurance maintained by Buyer shall be excess and non-contributing. The above coverage shall name Buyer as an additional insured.
3. Supplier shall maintain statutory workers' compensation coverage and employers' liability insurance in the amount of one million dollars (\$1,000,000 USD) per occurrence. Such insurance shall include an insurer's waiver of subrogation in favor of Buyer.
4. If Supplier is providing any professional service to Buyer, Supplier shall maintain professional liability insurance (including errors and omissions coverage) with liability limits not less than one million dollars (\$1,000,000 USD).
5. Supplier shall also provide written notice to Buyer of any cancellation, termination or material change to the insurance required herein along with a copy of any cancellation or termination notice received from its' insurer(s), no later than fifteen (15) business days upon first becoming aware of any such cancellation, termination, or material change.
6. Supplier will not permit any such insurance policy to lapse. If Supplier cancels such insurance policy, it will provide thirty (30) days' notice to Buyer prior to canceling such insurance policy and will promptly replace such insurance policy in accordance with the insurance requirements in this Attachment 2, without lapse in coverage.

*-End of PO Terms and Conditions-*