



# MCAfee® TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

McAfee (as defined below) will provide Technical Support services in accordance with the following terms and conditions ("Terms").

## 1) Definitions.

- a) "Authorized Partner" means any of McAfee's authorized distributors, resellers or other business partners.
- b) "Customer" means the entity which has purchased Products and to which McAfee provides Support.
- c) "Grant Letter" means a confirmation notice issued electronically by McAfee to Customer confirming Products and Support purchased by Customer, including without limitation Customer's Support Level entitlement, the Grant Number, the Support Period and download details.
- d) "Grant Number" means a unique number communicated by McAfee in a Grant Letter confirming a customer's Support entitlement and is required when accessing Support.
- e) "Hardware" means McAfee branded hardware equipment but excludes any Software or other intangible products.
- f) "McAfee" means (a) McAfee, Inc., a Delaware corporation, with offices located at 3965 Freedom Circle, Santa Clara, California 95054, USA if the Support is purchased in the United States, Mexico, Central America, South America, or the Caribbean; (b) McAfee Ireland Limited, with offices located at McAfee Ireland Ltd, Building 2000, City Gate, Mahon, Cork, Ireland, if the Support is purchased in Canada, Europe, the Middle East, Africa, Asia (other than Japan), or Oceania ; and (c) McAfee Co., Ltd. with offices located at Shibuya Mark City West Building 12-1, Dogenzaka 1-Chrome, Shibuya-ku, Tokyo 150-0043, Japan if the Support is purchased in Japan.
- g) "Product(s)" means McAfee's Software and Hardware product specified in a Grant Letter.
- h) "Support", "Technical Support" or "Technical Support and Maintenance" means the support services for McAfee Products purchased by Customer either from McAfee or from McAfee's Authorized Partner which are dependent on the Support Level purchased.
- i) "Software" means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Customer.
- j) "Support Period" means the effective time period for which the Customer has purchased Support that is confirmed in a Grant Letter.
- k) "Support Region" means any one of the following five (5) regions: (i) North America, (ii) Europe, Middle East and Africa ("EMEA"); (iii) Asia Pacific ("APAC"); (iv) Japan, and (v) Latin America ("LTAM").
- l) "Support Level(s)" means the McAfee Support offering purchased by Customer. Software and Hardware Support Levels are defined on datasheets available at:  
<http://www.mcafee.com/us/support/support-benefits.aspx>
- m) "Upgrade" means any and all improvements in the Products which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- n) "Updates" are related to content of the Product and include without limitation all DATs ("DATs" or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Products which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

## 2) Provision of Support.

McAfee will provide Support to Customer during the Support Period at the Support Level that has been purchased by Customer and is confirmed to Customer in a Grant Letter. Customer will not be entitled to receive Support outside of the Support Period.

## 3) Updates and Upgrades

McAfee grants to Customer a non-exclusive, non-transferable license to use Upgrades and Updates provided by McAfee during the Support Period as a part of purchased Support. Such Upgrades and Updates are subject to the terms of the license granted by McAfee to the Customer for the Software. Customer shall promptly download, distribute and install all Updates as released by McAfee during the Support Period. McAfee strongly suggests that Customer also downloads, distributes and installs all Upgrades as released by McAfee during the Support Period and Customer acknowledges that any failure to do so could result in Customer's inability to receive Updates and Technical Support and therefore could cause major security risks. An Upgrade may require a hardware upgrade or new platform conversion to function properly.



**4) Supported Versions and End of Life**

The provision of Support is limited to (i) the current version and (ii) the immediately preceding version of the Product. Notwithstanding any of the foregoing, Support is subject to McAfee's End-of-Life Policy available at

[http://www.mcafee.com/common/media/mcafeeb2b/support/terms/Support\\_Policy-Product\\_Support\\_EOL.pdf](http://www.mcafee.com/common/media/mcafeeb2b/support/terms/Support_Policy-Product_Support_EOL.pdf)

It is Customer's responsibility to review McAfee's Product Support Lifecycle webpage at:

[http://www.mcafee.com/us/enterprise/support/customer\\_service/end\\_life.html](http://www.mcafee.com/us/enterprise/support/customer_service/end_life.html) to determine whether a Product qualifies for Support. Furthermore, Customer proactive Support notifications can be accessed by subscribing to McAfee Support Notification Service (SNS) available at [http://my.mcafee.com/content/SNS\\_Subscription\\_Center](http://my.mcafee.com/content/SNS_Subscription_Center).

**5) Response Times**

McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <http://www.mcafee.com/us/support/support-benefits.aspx>. Access to McAfee's websites for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors.

**6) Bug Fixing and Remote Diagnostics.**

McAfee uses commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With Customers prior authorization, McAfee may perform remote diagnostics to work on reported problems. In the event Customer declines remote diagnostics, McAfee and Customer may agree to on-site Support subject to an additional fee including reasonable travel and other expenses.

**7) Support Period and Expired Support**

The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. In the event the Support expires, any reinstatement of Support must be purchased to cover the lapsed Support since expiration and be renewed until the Support is current. Support must be purchased within one (1) year after expiration of the previous Support Period. An additional out of compliance fee is required for lapsed Support.

**8) Support Coverage**

Support is sold based upon the quantity of all Products purchased by Customer. Upon purchasing Support for a Product, Customer must purchase the same Support Level for all Product units owned or licensed by Customer that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Customer on a per-product family basis and are sold per Support Region.

**9) Acquired Company Products**

From time to time McAfee may acquire other companies and continue to support the products licensed by such companies ("Acquired Products"). The Support Level(s) defined herein may not be applicable to the Acquired Products at the time of the acquisition but McAfee may within a reasonable period of time after the acquisition provide a description of the Support Level(s) available for the Acquired Products which will become applicable once published on the Support webpage.

**10) Exclusions**

McAfee has no obligations to, (i) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (ii) provide Support for Hardware damaged by or Hardware failures caused by Customer (iii) import or export customer data, create or modify custom business rules or reports, or support custom modifications to databases, active server pages, or other code, components or programs. iv) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published McAfee specifications.

**11) Obligations of Customer**

- a) **Support Process:** Customer must report Product problems to McAfee Support organization, and be prepared to provide McAfee with (i) the Grant Number, (ii) the location of the Product, (iii) a detailed description of the problem, (iv) a description of the hardware on which the Software is loaded, including any serial number or service tag number where applicable, and (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. McAfee may request that Customer takes certain actions to determine whether the problem or error is related to the Product, or other item. Customer must reasonably cooperate with McAfee during this process.
- b) **Access:** Customer shall provide McAfee with sufficient, free and safe access to the Products, Customer's computer systems networks and facilities in the event that it is agreed that McAfee will provide on-site support at Customer's location or facilities or that McAfee will perform remote diagnostics.
- c) **Backup and Restore:** Customer must keep adequate backup copies of data, databases, and application programs and agrees that Customer is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.



12) **Termination.**

McAfee reserves the right to immediately terminate Support, without any further obligation to Customer, if Customer tampers with or modifies the Product without prior written authorization of McAfee, or otherwise uses the Products in violation of the applicable agreement or of these Support terms. Any terms which by their nature extend beyond the termination remain in effect until fulfilled.

13) **Hardware specific terms**

- a) Region and Geographic Limitations: Unless otherwise agreed in writing by McAfee or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Customer originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <http://www.mcafee.com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf>
- b) Hardware Return: Prior to returning any Hardware to McAfee for repair or replacement, Customer must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Customer proprietary or confidential information that prevent McAfee from exchanging, repairing or replacing the Hardware, (ii) Customer has obtained a return authorization from McAfee, including a return material authorization number (a "RMA Number"). Hardware returned to McAfee becomes the property of McAfee at the time it is received by McAfee and Customer shall assume ownership of all replacement Hardware provided by McAfee to Customer upon shipment by McAfee.
- c) Restrictions: Customer must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from McAfee. Customer must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from McAfee or breach any tamper seal on the Hardware.
- d) Inspection Period: McAfee reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents in consideration of a separate fee and to request Customer to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.

14) **Confidentiality**

McAfee and Customer agree to hold each other's Confidential Information in confidence and not to disclose it to any third party without the prior written consent of the disclosing party. "Confidential Information" means information disclosed by discloser or its affiliates, which is identified as confidential, or which can reasonably be considered confidential due to its nature, or in the circumstances surrounding disclosure. Confidential Information does not include information which: (i) is in the public domain; (ii) was or lawfully becomes known to the receiver; or (iii) was independently developed by the receiver. The parties agree to use such Confidential Information of the disclosing party only as it relates to the performance of the party's obligations under these terms. Further, the receiving party shall use the same degree of care it uses with respect to its own confidential information to prevent the unauthorized disclosure to a third party, but in no event less than reasonable care.

15) **Warranty**

MCAFFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND MCAFFEE'S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. MCAFFEE SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF CUSTOMER PROVIDES WRITTEN NOTICE OF THE BREACH TO MCAFFEE WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, SKILL AND CARE. MCAFFEE DOES NOT WARRANT OR GUARANTEE THAT SUPPORT WILL BE FREE FROM ERRORS OR DEFECTS OR THAT THE SUPPORT WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to you. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY).

16) **Limitation of Liability**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, WORK STOPPAGE, AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES.

Regardless of whether the claim for such damages is based in contract, tort and/or any other legal theory, in no event shall either party's aggregate liability to the other party for direct damages exceed the lesser of:

- a) the amount of Support fees, attributable to the Product giving rise to the claim, paid or payable by Customer for a twelve (12) month period immediately preceding the event giving rise to the claim or



- b) the applicable McAfee Support List Price current at the date of the purchase or renewal attributable to the Product giving rise to such claim,

even if the other party has been advised of the possibility of such damages. "List Price" shall mean for the purpose of this clause the then current annual fee as listed in McAfee's applicable list price for the Support of the Product.

No provision of this Agreement shall exclude or limit in any way (i) the liability of both parties for death or personal injury caused by negligence or (ii) Customer's liability for excess usage and/or any breach of McAfee's intellectual property rights.

THE LIMITATION OF LIABILITY IN THIS SECTION IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY CUSTOMER CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO CUSTOMER'S NEEDS IN THE EVENT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER'S AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THIS SOFTWARE WOULD BE HIGHER

17) **General:**

- a) **Recording:** In providing Support, McAfee may record all or part of telephone calls between Customer and McAfee for quality assurance and training purposes in compliance with applicable laws.
- b) **Assignment:** The provision of Support is not assignable by Customer without the prior written consent of McAfee. Any attempt of assignment by Customer without such consent will be void. McAfee may subcontract its obligations to provide Support hereunder to another party.
- c) **Audit:** McAfee may, at its expense, upon reasonable prior written notice and during standard business hours, audit Customer with respect to Customer's compliance with these terms no more than once per year. Customer understands and acknowledges that McAfee utilizes a number of methods to verify and support Product use by its customers. These methods may include technological features of the Product that prevent unauthorized use and provide Product deployment verification. Upon reasonable request, Customer will provide a system generated report verifying the Product deployment, such request to occur no more than two (2) times per year. McAfee will not unreasonably interfere with the conduct of Customer's business.
- d) **Export Control:** The Products and Support are subject to export controls under the U.S. Export Administration Regulations and implementing regulations and other applicable law. Therefore, the Products and Services 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  
<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>.
- e) **ITAR:** Customer acknowledges that Support provided hereunder shall not be used for the design, development, configuration, adaption or modification of a military item listed on the United States Munitions List (USML [http://www.access.gpo.gov/nara/cfr/waisidx\\_05/22cfr121\\_05.html](http://www.access.gpo.gov/nara/cfr/waisidx_05/22cfr121_05.html)) which would subject Support to the International Traffic in Arms Regulations (ITAR, [http://www.pmdtc.state.gov/regulations\\_laws/itar.html](http://www.pmdtc.state.gov/regulations_laws/itar.html)).
- f) **Governing law:** These terms will be governed by and construed in accordance with the substantive laws in force: (a) in the State of New York, if the Support was purchased in the United States, Mexico, Central America, South America, or the Caribbean; (b) in the Republic of Ireland, if Support was purchased in Canada, Europe, Middle East, Africa, Asia (other than Japan), or the region commonly referred to as Oceania; and (c) in Japan if Support was purchased in Japan. If Support was purchased in any other country, then the substantive laws of the Republic of Ireland shall apply. United States District Court for the Southern District of New York, when New York law applies, the courts of the Republic of Ireland, when the law of Ireland applies, the courts of Japan when Japanese law applies, shall each have non-exclusive jurisdiction over all disputes relating to these terms.

18) **Entire Agreement**

The Terms and any additional terms referenced herein constitute the entire agreement between Customer and McAfee with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof. The Terms may not be modified except by a written addendum agreed to by McAfee and Customer.