



## Professional Service Terms

**1. Agreement Structure** These Professional Service Terms apply to any referencing Statement of Work executed by McAfee and Customer ("SOW"). Technical Support shall not fall under these Terms. In the event of any conflict between these Terms and any SOW, the terms of the SOW shall prevail. "Customer", "McAfee", and "Service" have a meaning defined in the applicable SOW

**2. Price and Payment.** Service fees are specified in the SOW. All completion times mentioned in the SOW are only estimates for Customer's and McAfee's resource scheduling. Customer shall pay all invoices within 30 days of date of invoice.

**3. Taxes.** Customer shall pay all sales and other taxes, however designated, which are levied or imposed in connection with the Services, excluding taxes based on McAfee's net income.

**4. Access.** Customer shall provide McAfee with sufficient, free and safe access to Customer's computer systems and networks to enable performance of the services.

**5. Proprietary Rights.** McAfee acknowledges Customer's and its licensors' proprietary rights in preexisting works of authorship provided by Customer to McAfee pursuant to this Agreement ("**Customer IP**"). Except for any Customer IP, McAfee exclusively owns any and all intellectual property and other materials including without limitation object code, source code, documentation, information and ideas developed hereunder (collectively, the "**McAfee Material**") All applicable patents, copyrights, trademarks, trade secrets and other rights and interests in the McAfee Material are and shall remain vested entirely in McAfee. Upon payment of the Service fees, Customer shall be granted a perpetual, non-transferable, non-exclusive license to use any McAfee Material for its internal business purposes. McAfee shall not have any right to any Customer IP, except as strictly necessary for the performance of the Services.

**6. Indemnity.** McAfee hereby agrees to indemnify and defend Customer from all claims by a third party that the Services or McAfee Material infringe upon a copyright, trademark, trade secret or patent provided that (a) Customer promptly notifies McAfee of the claim,,(b) Customer allows McAfee to control the defense and settlement negotiations, (c) Customer cooperates with McAfee in the defense and any related settlement negotiations and (d) such claim did not occur because of Customer's breach of the Agreement. Customer may elect to participate in any such action using its own attorney at its own expense. In the event Customer is precluded by a court of competent jurisdiction from receiving the Services as a result of the foregoing, McAfee may, in its sole and reasonable discretion, (i) obtain the right to deliver the Services to the Customer, or (ii) modify them, or (iii) replace them with Services that are at least functionally equivalent. If McAfee determines that none of these alternatives are commercially practicable in McAfee's reasonable discretion, then McAfee may terminate the SOW for the affected Services and shall refund the residual value of the fees

paid by Customer for the infringing Services, depreciated using a straight line method of depreciation over a three (3) year period from the date of performance of the Services.

**7. Non-Disclosure.** "Confidential Information" shall mean all information (i) that is designated as "confidential" or by similar words at the time of disclosure and if oral or visual is confirmed as confidential by the disclosing party in writing within fifteen (15) days of disclosure, or (ii) which the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure. Each party agrees it will not disclose any such Confidential Information to any third party for a period of five (5) years following the date of disclosure. Each party will take reasonable precautions to prevent disclosure to any third party, at least as great as the precautions it takes to protect its own confidential information. Confidential Information shall not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure, (iv) is independently developed by the receiving party without the use of Confidential Information, (v) is in writing approved for release, or (vi) is required to be disclosed pursuant to any court order provided that the receiving party has informed the disclosing party of such request in a timely manner. Either party may disclose Confidential Information to auditors and McAfee to its group companies under an obligation of confidentiality no less stringent.

**8. Warranty.** McAfee warrants that the Services will be performed in a professional manner consistent with relevant industry standards. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MCAFEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED AND DOES NOT GUARANTEE FOR VULNERABILITY SERVICES TO FIND ALL VULNERABILITES. CUSTOMER DISCLAIMS ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND TITLE.

**9. Exclusive Remedy.** Customer's exclusive remedy for breach of warranty and McAfee's total liability arising out of McAfee's performance of Services, shall be the re-performance of the Services. If McAfee fails to re-perform the Services, McAfee will refund the fees paid by Customer for the deficient Services. McAfee shall only have liability for such breaches of warranty if customer provides written notice of the breach within thirty (30) days of the performance of the applicable Services

**10. Limitation of Liability.** MCAFEE'S LIABILITY FOR DAMAGES FROM ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO THIS SERVICES OR WORK PRODUCT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE APPLICABLE SERVICES. MCAFEE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF DATA, EVEN IF MCAFEE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Neither the



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foregoing nor any other provision of the Terms or the SOW shall exclude or limit in any way the liability of McAfee for death or personal injury caused by McAfee's negligence, willful misconduct or intention.

**11. Insurance.** McAfee shall maintain insurance with coverage at least equal to what a prudent company would carry under similar circumstances and will provide details upon request.

**12. Termination and Rescheduling.** In the event of any material breach of this Agreement by either party, the non-breaching party may cancel this Agreement by giving 30 days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the 30 day period. Any terms which by their nature extend beyond the termination remain in effect until fulfilled. Customer is permitted to reschedule a consulting engagement one time, with at least five (5) business days prior notice, without incurring additional fees.

**13. Notice and Report.** Any notice under these terms or a SOW shall be given in writing. Customer shall sign a report presented by McAfee outlining the performance of the Services on the project. Such report shall be deemed to be accepted if it is not returned within ten (10) days of receipt.

**14. Assignment.** Assignment of this Agreement is prohibited without the express written consent of the other party; except that McAfee may assign its interest in this Agreement in connection with a merger or other business combination in which McAfee is not the surviving entity.

**15. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law) and any dispute shall be determined by the courts of New York.

**16. Export.** Customer agrees to comply with all applicable export and import laws and regulations in the use of any McAfee Material.

**17. Complete Agreement.** These terms and any SOW set out the entire understanding of the parties, superseding all prior agreements and understandings as to the subject matter hereof, notwithstanding any oral representations or statements to the contrary. These terms and any SOW may only be modified in writing, executed by both parties. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. If any provision, or part thereof, in these Terms or a SOW is held to be invalid or unenforceable, the remaining provisions of these terms shall remain in full force and effect.