

## END USER LICENCE AGREEMENT

BY DOWNLOADING, INSTALLING, COPYING, ACCESSING OR USING THIS SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.

IF YOU DO NOT AGREE TO THESE TERMS:

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS OR USE THE SOFTWARE, AND
- PROMPTLY RETURN THE SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED THEM

### 1) Definitions.

- “Authorized Partner” means any of McAfee’s distributors, resellers or other business partners.
- “Grant Letter” means a confirmation notice letter issued electronically by McAfee to you, confirming Software and Support purchased by you, including the applicable product entitlement, as defined in the Product Entitlement Definitions (further described at Section 3(a) below) and also containing download details.
- “Documentation” means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
- “McAfee” means (a) McAfee, Inc., a Delaware corporation, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States, Mexico, Central America, South America or the Caribbean, (b) McAfee Ireland Limited, with its registered offices located at 25/28 North Wall Quay, Dublin 1, Ireland, if the Software 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-Chome, Shibuya-ku, Tokyo 150-0043, Japan, if the Software is purchased in Japan.
- “Node” means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers or portable workstations connected or connecting to the server(s) or network.
- “Software” means each McAfee software program in object code format licensed by McAfee and purchased from McAfee or its Authorized Partners, including Upgrades.
- “Subsidiary” refers to any entity controlled by you through greater than fifty per cent (50%) ownership of the voting securities.
- “Support” or “Technical Support” means the support services offered by McAfee for the support and maintenance of the Software and McAfee brand hardware further specified in the McAfee Technical Support and Maintenance Terms.
- “Updates” are related to content and include without limitation all DATs, signature sets, policy updates, database updates for the Software 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.
- “Upgrade” means any and all improvements in the Software which are made generally available to McAfee’s customer base as part of purchased Support and which are not separately priced or marketed by McAfee.

### 2) Licence Grant.

Subject to the terms and conditions of this Agreement, McAfee hereby grants to you a non-exclusive, non-transferable right to use the Software (for the purpose of this Agreement, use of the Software means to access, install, download, copy or otherwise benefit from using the Software) listed in the Grant Letter solely for your own internal business operations. You acknowledge that the Software and all related information are proprietary to McAfee and its suppliers. You are not granted rights to Updates and Upgrades unless you have purchased Support or a service subscription.

### 3) Copy and Use terms.

- Product entitlement: The use of the Software depends on the licences purchased (e.g. Nodes) and is subject to the Product Entitlement Definitions set forth at [http://www.mcafee.com/us/local\\_content/legal/product\\_entitlement\\_definitions.pdf](http://www.mcafee.com/us/local_content/legal/product_entitlement_definitions.pdf) on the applicable date of your Grant Letter.
- Multiple platforms/Bundles: If the Software supports multiple platforms or if you receive the Software bundled with other software, the total number of devices on which all versions of the Software is installed may not exceed your product entitlement. Certain Software licenced as part of a suite-based McAfee product may also require

the purchase of a separate McAfee server licence in order to use the Software on certain types of servers, in each case as specified in the Documentation.

- c) Term: The licence is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter, otherwise the licences shall be perpetual.
- d) Copies: You may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
- e) Subsidiaries: You may permit use of the Software in accordance with the terms of this Agreement by a Subsidiary only for so long as such entity remains your Subsidiary. You shall be responsible and fully liable for each Subsidiary's compliance with or breach of the terms of this Agreement.
- f) Managing Party: If you enter into a contract with a third party in which the third party manages your information technology resources ("Managing Party"), you may transfer all your rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Software for your internal operations and not for the benefit of another third party or the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement and (c) you provide McAfee with written notice that a Managing Party will be using the Software on your behalf.
- g) General Restrictions: You may not, nor allow any third party to: (i) decompile, disassemble or reverse-engineer the Software, except to the extent expressly permitted by applicable law, without McAfee's prior written consent; (ii) remove any product identification or proprietary rights notices of the Software or Documentation; (iii) lease, lend or use the Software for timesharing or service bureau purposes; (iv) modify or create derivative works of the Software, (v) except with McAfee's prior written permission, publish any performance or benchmark tests or analysis relating to the Software or (vi) otherwise use or copy the Software except as expressly provided herein.

#### 4) **Technical Support and Maintenance.**

The McAfee Technical Support and Maintenance Terms apply if you have purchased Support. The McAfee Technical Support and Maintenance Terms are incorporated by reference and can be found at <http://www.mcafee.com/us/resources/misc/mfe-techsupport-terms.pdf>. After the support or service subscription period specified in a Grant Letter has expired, you have no further rights to receive any Support including Upgrades, Updates and telephone support.

#### 5) **Limited Warranty and Disclaimer.**

- a) Limited Warranty: McAfee warrants that, for a period of sixty (60) days from the purchase date ("Warranty Period"), the Software licensed hereunder (including Upgrades provided within the Warranty Period for the remainder of the Warranty Period) will perform substantially in accordance with the Documentation.
- b) Exclusive Remedy: In case of any breach of the above limited warranty, McAfee will (a) repair or replace the Software or (b) if such repair or replacement would in McAfee's opinion be commercially unreasonable, refund the price paid by you for the applicable Software.
- c) Exclusion of Warranty: The above Limited Warranty will not apply if: (i) the Software is not used in accordance with this Agreement or the Documentation, (ii) the Software or any part thereof has been modified by any entity other than McAfee or (iii) a malfunction in the Software has been caused by any equipment or software not supplied by McAfee.
- d) Disclaimer: THE ABOVE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE 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. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND MCAFFEE MAKES NO WARRANTY OR GUARANTEE AS TO ITS USE OR PERFORMANCE AND DOES NOT WARRANT OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
- e) Exceptions: 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 WARRANTY PERIOD (OR THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW).

#### 6) **Limitation of Remedies and Damages.**

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 total fees paid or payable by you for the Software giving rise to such claim during the 12 months immediately preceding the event giving rise to such claim or
- b) the applicable McAfee list price, at the date of the purchase, for the Software giving rise to such claim ordered by you during the 12 months immediately preceding the event giving rise to such claim,

even if the other party has been advised of the possibility of such damages.

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

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

7) **Intellectual Property Indemnity.**

- a) Third-party claims: McAfee shall defend and hold you harmless from any claim by a third party that the Software infringes, whether a patent, copyright or trade secret of that third party, provided that: (i) McAfee is notified promptly, and in any event no later than within 14 days of your receipt of notice of the claim, (ii) McAfee receives the required level of reasonable cooperation from you in order to perform McAfee's obligations hereunder and (iii) McAfee has sole control over the defence and all negotiations for a settlement or compromise of the claim. The foregoing obligation of McAfee does not apply with respect to Software or portions or components thereof that are: (i) not supplied by McAfee, (ii) used in a manner not expressly authorized by this Agreement or the relevant Documentation, (iii) made in accordance with your specifications, (iv) modified by anyone other than McAfee, if the alleged infringement relates to such modification, (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination or (vi) where you continue the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.
- b) Remedy and Liability: In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or use of the Software is enjoined, McAfee shall, at its sole discretion, do one of the following: (i) procure for you the right to continue use of the Software, (ii) provide a modification to the Software so that its use becomes non-infringing, (iii) replace the Software with software that is substantially similar in functionality and performance or (iv), if none of the foregoing alternatives is reasonably available to McAfee, McAfee shall refund the residual value of the purchase price paid by you for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to you. This Section 7 states McAfee's sole liability and your exclusive remedy for intellectual property infringement claims.

8) **Termination.**

Without prejudice to your payment obligations, you may terminate your licence at any time by uninstalling the Software. McAfee may terminate your licence in the event that you materially breach the terms of this Agreement and you fail to cure such breach within thirty (30) days of receiving notice of such breach. Upon such termination, you shall promptly return or destroy all copies of the Software and Documentation.

9) **Additional Terms.**

- a) Evaluation Software: If the Software has been identified as "Evaluation Software", then the provisions of this section apply and shall supersede any other conflicting term of this agreement. Your royalty-free, non-transferable, limited licence to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless otherwise agreed to in writing by McAfee. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently, Evaluation Software is provided to you "AS IS" and McAfee disclaims any warranty or liability obligations to you of any kind. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes and shall not be provided to any third parties. The restrictions described in Section 3 g) apply. If you fail to destroy the Evaluation Software after the evaluation period has expired, McAfee may, at its discretion, invoice you in an amount equal to the McAfee List Price for the Evaluation Software and you shall pay such invoice upon receipt. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY (50) DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.

- b) **Beta Software:** If the Software that you have received has been identified as “Beta” Software, then the provisions of Section 9 a) above shall apply accordingly. McAfee has no obligation to you to further develop or publicly release the Beta Software. If requested by McAfee, you will provide feedback to McAfee regarding testing and use of the Beta Software, including error or bug reports. You agree to grant McAfee a perpetual, non-exclusive, royalty-free, worldwide licence to use, copy, distribute and make derivative works and incorporate the feedback into any McAfee product at McAfee’s sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by McAfee of a publicly released commercial version of the Beta Software, you agree to return or destroy all earlier Beta Software received from McAfee.
- c) **“Free” or “Open-Source” Software:** The product may include programs or code that are licensed under an Open-Source Software (“OSS”) licence model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS licence and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.

10) **Notice to United States Government End Users.**

The Software and accompanying Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

11) **Privacy and Collection of Personal or System Information.**

- a) The Software, Support or service subscription may employ applications and tools to collect personally identifiable, sensitive or other information about you and users (e.g., including, without limitation, your and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, McAfee products installed, McAfee components, processes and services information, frequency and details of update of McAfee components, information about third party products installed, extracts of logs created by McAfee, usage patterns of McAfee products and specific features, etc.) (collectively, “Data”).
- b) The collection of this Data may be necessary to provide you and users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on your and users’ computer network), enable McAfee to improve our Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.) and to further or improve overall security for you and users. You may be required to uninstall the Software or disable Support or its service subscription to stop further Data collection that supports these functions.
- c) By entering into this Agreement, or using the Software, Support or service subscription, you and users agree to the McAfee Privacy Policy on the McAfee web site ([www.McAfee.com](http://www.McAfee.com)) and to the collection, processing, copying, backup, storage, transfer and use of this Data by McAfee and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of your or user’s own as part of the Software, Support or service subscription. You are solely responsible for securing any privacy-related rights and permissions from your users as may be required by local law or by your internal policies. McAfee will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with the McAfee privacy policy on the McAfee web site ([www.McAfee.com](http://www.McAfee.com)).

12) **Audit.**

McAfee may, at its expense, upon reasonable prior written notice to you and during standard business hours, audit you with respect to your compliance with the terms of this Agreement no more than once per year. You understand and acknowledge that McAfee utilizes a number of methods to verify and support software use by its customers. These methods may include technological features of the Software that prevent unauthorized use and provide Software deployment verification. Upon reasonable request, you will provide a system-generated report verifying your Software deployment, such request to occur no more than two (2) times per year. McAfee will not unreasonably interfere with the conduct of your business.

13) **Export Controls.**

You acknowledge that the Software is subject to US and, when applicable, European Union export regulations. You shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. You shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. You are responsible, at your own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and

importing the Software, see [http://mcafee.com/us/about/export\\_compliance/index.html](http://mcafee.com/us/about/export_compliance/index.html) (then click on US Export Compliance). McAfee reserves the right to update this website from time to time, at its sole discretion.

14) **Governing Law.**

This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of New York, if you purchased the Software in the United States, Mexico, Central America, South America or the Caribbean, (b) in the Republic of Ireland, if you purchased the Software in Canada, Europe, Middle East, Africa, Asia (other than Japan) or the region commonly referred to as Oceania and (c) in Japan, if you purchased the Software in Japan. If you purchased the Software in any other country, then the substantive laws of the Republic of Ireland shall apply, unless another local law is required to be applied. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply, The 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 this Agreement.

15) **Confidentiality**

Each Party hereto acknowledges that by reason of its relationship with the other party hereunder, it may have access to confidential information and materials concerning the other party's business, technology, and/or products that is confidential and of substantial value to the other Party, which value could be impaired if such information were disclosed to third parties ("Confidential Information"). Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing Party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each Party agrees that it will not use in any way for its own account or the account of any third party, such Confidential Information, except as authorized under this Agreement, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither Party may use the other Party's Confidential Information except to perform its duties under this Agreement. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving Party, (ii) becomes publicly available through no wrongful act of the receiving Party, (iii) independently developed by the receiving Party without benefit of the disclosing Party's Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality or (v) is required to be disclosed by law, provided the Party compelled to disclose the Confidential Information provides the Party owning the Confidential Information with prior written notice of disclosure adequate for the owning Party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both Parties, upon termination of this Agreement or an applicable Addendum, each Party will return the other Party's Confidential Information.

16) **Miscellaneous.**

- a) Except for actions for non-payment or breach of McAfee's proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than 2 years after a party knew or should have known of the claim.
- b) Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.
- c) This Agreement, including all documents incorporated by reference, represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If you issue an order to an Authorized Partner or to McAfee and the terms and conditions of the order conflict with the terms and conditions of a) this Agreement or b) the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of McAfee. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by McAfee. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.
- d) All notices, requests, demands and determinations for McAfee under this Agreement (other than routine operational communications) shall be sent to: the applicable entity address on the first page of this Agreement addressed to "Attention: Legal Department".