

McAfee's Data Processing Exhibit

[Incorporating the Standard Contractual Clauses: C-to-P Transfer]

This Data Processing Exhibit ("**Data Processing Exhibit**") is governed by and subject to the _____ (the "**Agreement**"), dated as of _____, by and between **McAfee, LLC** ("**McAfee**") and _____ ("**Supplier**"). All capitalized term not expressly defined in this Data Processing Exhibit will have the meaning ascribed to it in the Agreement.

1. **DEFINITIONS**

"**BCRs**" means the Binding Corporate Rules approved in accordance with Article 47 and 63 of the GDPR, which McAfee represents to be in the process of setting in place and which, once approved, will maintain throughout the term of the Agreement;

"**California Consumer Privacy Act of 2018**" or "**CCPA**" means Assembly Bill 375 of the California House of Representatives, an act to add Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code, relating to privacy and approved by the California Governor on June 28, 2018;

"**Data Protection Laws**" means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country;

"**Data Subject**" means (i) an identified or identifiable natural person who is in the EEA or whose rights are protected by the GDPR; or (ii) a "Consumer" as the term is defined in the CCPA;

"**Data Subject Rights**" means those rights identified in the GDPR and the CCPA granted to Data Subjects;

"**EEA**" means the European Economic Area;

"**EU Data Protection Laws**" means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("General Data Protection Regulation" or "GDPR"), as transposed into domestic legislation of each Member State and the laws implementing the GDPR;

"**Personal Data**" means any information that directly or indirectly identifies or relates to a data subject.

"**Standard Contractual Clauses**", "**SCCs**", or "**SCC**" means the standard contractual clauses for the transfer of personal data from controllers in the EU to data processors established outside the EU or EEA issued by the European Commission under decision 2010/87/EU attached hereto as Annex 2, as amended by Section 3;

"**Subprocessor**" means any processor engaged by the Supplier or by any other subprocessor of the Supplier, which agrees to receive from the Supplier, or from any other subprocessor of the Supplier, McAfee Personal Data exclusively with the intention for processing activities to be carried out on behalf of McAfee and in accordance with its instructions, the terms of the Agreement, this Data Processing Exhibit and the terms of the written subcontract;

“Supervisory Authority” means either (as applicable): (i) an independent public authority which is established by an EU Member State pursuant to Article 51 of the GDPR; or (ii) the California Attorney General;

The terms, "**Commission**", "**Controller**", "**Member State**", "**Personal Data Breach**", "**special categories of data**", and "**Processing**" have the meanings given in the Data Protection Laws.

2. **DETAILS OF THE PROCESSING ACTIVITIES**

2.1 McAfee shall be the Controller under the GDPR and “business” under the CPPA (or similar concept under other Applicable Laws) and, Supplier and Supplier’s sub-contractors shall be a “processor” under the GDPR and “Service Provider” as defined in CCPA section 1798.140 (v) (or similar concept under other Applicable Laws) regarding the Personal Data processed by Supplier on McAfee's behalf ("**McAfee Personal Data**").

2.2 The details of the processing activities to be carried out by the Supplier under the Agreement and, the special categories of Personal Data where applicable, are specified in Appendix 1 of Schedule 1.

3. **OBLIGATIONS OF THE SUPPLIER**

The Supplier agrees and warrants:

3.1 to process McAfee Personal Data only:

(a) on behalf of McAfee and in accordance with its documented instructions unless otherwise required by Data Protection Laws;

(b) for the sole purpose of executing the Agreement or as otherwise instructed by McAfee, and not for the Supplier's own purposes or other commercial exploitation except in the legitimate interest of the Supplier, in accordance with section 6 f of the GDPR, or any other applicable Data Protection Laws. This provision shall not apply to anonymized DDoS and traffic statistics that may be collected as long as such data cannot be attributed directly or in combination with other data to McAfee Personal Data; and

(c) in compliance with this Data Processing Exhibit; and

(d) in an encrypted and anonymized manner as, necessary while in transit and storage and in accordance with the current state of the art encryption technology as available in the commercial marketplace

3.2 if it is legally required to process McAfee Personal Data otherwise than as instructed by McAfee, Supplier shall notify McAfee before such processing occurs, unless the Data Protection Law requiring such processing prohibits the Supplier from notifying McAfee on an important ground of public interest, in which case it shall notify McAfee as soon as that Data Protection Law permits it to do so.

3.3 that it has implemented and will maintain appropriate technical and organisational measures in accordance with those described in the International Organization for Standardization (ISO 27001, ISO 27018 or its equivalent or superseding standard if applicable) to protect McAfee Personal Data against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access and, in particular, where the processing involves the transmission of data over a network, against all other unlawful forms of processing. Having regard to the state of the art and cost of their implementation, the Supplier agrees that such measures shall ensure a level of security appropriate to the risks

represented by the processing and the nature of McAfee Personal Data to be protected and will at a minimum include those measures described in Appendix 2 of Schedule 1.

- 3.4 that protective devices are set up for ensuring the integrity and the authenticity of McAfee Personal Data, especially the state of the art protective devices against malware and similar security attacks.
- 3.5 that it has implemented measures to prevent McAfee Personal Data from undergoing any unwanted degradation or deletion without having a copy immediately usable;
- 3.6 that it has a business continuity plan which includes measures to reduce unavailability of the services in the event of a lasting incident or security breach, and which includes service levels and maximum recovery response and resolution time charter to face any crisis scenario;
- 3.7 that it will treat all McAfee Personal Data as confidential information and not disclose such confidential information without McAfee's prior written consent except:
 - (a) to those of its personnel who need to know the confidential information in order to carry out the Services; and
 - (b) where it is required by a court to disclose McAfee Personal Data, or where there is a statutory obligation to do so, but only to the minimum extent necessary to comply with such court order or statutory obligation.
- 3.8 to take reasonable steps to ensure that its personnel who have access to the Personal Data:
 - (a) are subject to a code of conduct and an ethic guide substantially compliant with McAfee's code of conduct available at <https://www.mcafee.com/us/resources/misc/code-of-conduct.pdf>
 - (b) are both informed of the confidential nature of McAfee Personal Data and obliged to keep such McAfee Personal Data confidential; and
 - (c) are aware of and comply with the Supplier's duties and their personal duties and obligations under this Data Processing Exhibit.
- 3.9 that it will promptly, and at least within 24 hours, notify McAfee about:
 - (a) any instruction which, in its opinion, infringes applicable law;
 - (b) any actual or suspected security breach, unauthorised access, misappropriation, loss, damage or other compromise of the security, confidentiality, or integrity of McAfee Personal Data processed by Supplier or a subprocessor ("**Security Breach**");
 - (c) any complaint, communication or request received directly by the Supplier or a Subprocessor from a data subject and pertaining to their Personal Data, without responding to that request unless it has been otherwise authorised to do so by McAfee; and
 - (d) any change in legislation applicable to the Supplier or a Subprocessor which is likely to have a substantial adverse effect on the warranties and obligations set out in this Data Processing Exhibit.
- 3.10 that upon discovery of any Security Breach, it shall:
 - (a) immediately take action to prevent any further Security Breach; and

- (b) provide McAfee with full and prompt cooperation and assistance in relation to any notifications that McAfee is required to make as a result of the Security Breach.
- 3.11 to provide McAfee with full and prompt cooperation, at least within 48 hours, and assistance in relation to any complaint, communication or request received from a Data Subject, including by:
- (a) providing McAfee with full details of the complaint, communication or request;
 - (b) where authorised by McAfee, complying with a request from a data subject in relation to their McAfee Personal Data within the relevant timescales set out by applicable law and in accordance with McAfee's instructions;
 - (c) providing McAfee with any McAfee Personal Data it holds in relation to a Data Subject, if required in a commonly-used, structured, electronic and machine-readable format;
 - (d) providing McAfee with any information requested by McAfee relating to the processing of McAfee Personal Data under this Data Processing Exhibit;
 - (e) correcting, deleting or blocking any McAfee Personal Data; and
 - (f) implementing appropriate technical and organisational measures that enable it to comply with this paragraph 3.10.
- 3.12 to provide McAfee with full and prompt cooperation and assistance in relation to any data protection impact assessment or regulatory consultation that McAfee is legally required to make in respect of McAfee Personal Data.
- 3.13 to appoint, and identify to McAfee, an individual to support McAfee in monitoring compliance with this Data Processing Exhibit, and to make available to McAfee upon request all information and evidence necessary to demonstrate that the Supplier is complying with its obligations under this Data Processing Exhibit.
- 3.14 at the request of McAfee, to submit its data processing facilities for audits and inspections of the processing activities covered by this Data Processing Exhibit, which shall be carried out by McAfee or a regulated End-User Customer (i.e. when a government or regulatory body with binding authority ("Regulator") regulates such entity's regulated services such as banking for instance) or any independent or impartial inspection agents or auditors selected by McAfee or a regulated End-User Customer and not reasonably objected to by the Supplier, and to allow McAfee to provide any such reports to its End-User Customers where required.
- 3.15 that it shall maintain the list attached hereto as Appendix 3 of subprocessors that may Process the Personal Data of Supplier's customers. Supplier shall require all subprocessors to abide by substantially the same obligations as Supplier under this Agreement. Supplier remains responsible at all times for compliance with the terms of this Agreement by Supplier Affiliates and subprocessors. McAfee consents to Supplier's use of Supplier's Affiliates and subprocessors in the performance of the Services. Supplier shall inform McAfee of any new subprocessors Supplier intends to engage. McAfee may object to the engagement of any new subprocessor but shall not unreasonably withhold its consent to such appointment.
- 3.16 upon request, to promptly send a copy of any data privacy, data protection (including, but not limited to, measures and certifications) and confidentiality portions of an agreement it concludes with a subprocessor relating to McAfee Personal Data to McAfee.
- 3.17 shall promptly notify McAfee should Supplier receive a request from a data subject to have access to Personal Data or any complaint or request relating to McAfee's obligations under applicable Data

Protection Laws. McAfee is solely responsible for responding to such request unless Supplier does not inform McAfee of the request, and Supplier will not respond to any such data subject unless required by applicable laws or unless instructed in writing by McAfee to do so.

4. **LIABILITY**

4.1 The Supplier shall remain fully liable to McAfee for any subprocessors' processing of McAfee Personal Data under the Agreement.

4.2 Notwithstanding anything contained in the Agreement to the contrary, nothing in the limitation of liability in the Agreement will be read or interpreted in any way to limit Supplier's liability for breach of this Data Processing Exhibit.

5. **INTERNATIONAL DATA TRANSFER**

5.1 Without prejudice to any applicable Data Protection laws, no international transfer of Personal Data may take place to countries that do not provide for an adequate level of protection. Additionally, Personal Data processed within the European Economic Area (the "EEA") by Supplier pursuant to the Agreement shall not be exported outside the EEA without the prior written permission of McAfee.

5.2 Where Supplier has obtained McAfee's prior written permission to the transfer in accordance with clause 5.1, the Supplier agrees to comply with all applicable Data Protection Laws, and where relevant, the SCCs in its capacity as the processor whereby McAfee will be regarded as the Data Exporter and the Supplier will be regarded as the Data Importer.

5.3 The SCCs may be varied or terminated only as specifically set out in the SCCs.

5.4 In the event of inconsistencies between the provisions of the SCCs and this Data Processing Exhibit or the Agreement, the SCCs shall take precedence. In the event that the SCCs are amended, replaced or repealed by the European Commission or under Data Protection Laws, the parties shall work together in good faith to enter into any updated version of the SCCs or negotiate in good faith a solution to enable a transfer of Personal Data to be conducted in compliance with Data Protection Laws. This Data Processing Exhibit supersedes any and all prior understandings and agreements relating to the protection of data and compliance with Data Protection Laws and the express provisions of this Data Processing Exhibit control over any other agreement or amendment.

6. **INDEMNITY**

6.1 The Supplier agrees to indemnify and keep indemnified and defend at its own expense McAfee against all costs, claims, damages or expenses incurred by McAfee or for which McAfee may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Data Processing Exhibit.

7. **ALLOCATION OF COSTS**

7.1 Each party shall perform its obligations under this Data Processing Exhibit at its own cost.

8. **CALIFORNIA CONSUMER PRIVACY ACT OF 2018**

8.1 McAfee discloses Personal Data to Supplier solely for: (i) a valid business purpose; and (ii) Supplier to perform the Services.

8.2 Supplier is prohibited from: (i) selling Personal Data; (ii) retaining, using, or disclosing Personal Data for a commercial purpose other than providing the Services; and (iii) retaining, using, or disclosing the Personal Data outside of the Agreement between Supplier and McAfee.

8.4 Supplier understands the prohibitions outlined in Section 8.2.

9. **TERM AND TERMINATION OF THE SERVICES**

9.1 The parties agree that McAfee Personal Data will be processed by the Supplier for the duration of the Services under the Agreement.

9.2 The parties agree that upon termination of the Services in so far as they relate to McAfee Personal Data, the Supplier and all subprocessors shall, at the choice of McAfee, return all McAfee Personal Data and the copies thereof to McAfee, or securely destroy all McAfee Personal Data and certify to McAfee that it or they have done so, unless Data Protection Laws to which the Supplier or a subprocessor are subject prevent the Supplier or subprocessor from returning or destroying all or part of McAfee Personal Data. In such a case, the Supplier warrants that it will guarantee the confidentiality of McAfee Personal Data and will not actively process McAfee Personal Data anymore and will guarantee the return and/or destruction of McAfee Personal Data as requested by McAfee when the legal obligation to not return or destroy the information is no longer in effect.

10. **RECORDS AND PROOFS**

10.1 Supplier warrants it keeps records concerning its security, and organizational technical measures as well as records on any security incident affecting McAfee Personal Data. Such records shall be made available in a standard format immediately exploitable, upon McAfee's request in the course of a security check or in the framework of an audit.

11. **TERM, PORTABILITY AND REVERSIBILITY AND SURVIVAL**

11.1 This Data Privacy Exhibit is attached to and part of the Agreement and shall remain in full force as long as such Agreement remains in full force. In order to ensure portability of the Personal Data, and should the agreement be terminated for any reason, Supplier shall, within five (5) days of McAfee's request, make available McAfee Personal Data in a standard format. Such Information shall include account level information including IP addresses, hostnames, infrastructure information and McAfee contact information.

11.2 Survival. Any terms of this Exhibit which by their nature should survive the termination of this Exhibit shall survive such termination.

12. **MISCELLANEOUS**

12.1 In the event of inconsistencies between the provisions of this Data Processing Exhibit and the Agreement, the provisions of this Data Processing Exhibit shall prevail with regard to the parties' data protection obligations relating to McAfee Personal Data. In cases of doubt, this Data Processing Exhibit shall prevail, in particular, where it cannot be clearly established whether a clause relates to a party's data protection obligations.

12.2 Should any provision or condition of this Data Processing Exhibit be held or declared invalid, unlawful or unenforceable by a competent authority or court, then the remainder of this Data Processing Exhibit shall remain valid. Such an invalidity, unlawfulness or unenforceability shall have no effect on the other provisions and conditions of this Data Processing Exhibit to the maximum extent permitted by law. The provision or condition affected shall be construed either: (i) to be amended in such a way that ensures its validity, lawfulness and enforceability while preserving the parties' intentions, or if that is not possible, (ii) as if the invalid, unlawful or unenforceable part had never been contained in this Data Processing Exhibit.

12.3 If any variation is required to this DPE as a result of a change in Data Protection Law, then either Party may provide written notice to the other Party of that change in law. The Parties will discuss and negotiate in good faith any necessary variations to this DPA to address such changes. If McAfee gives notice under this Section 12.3, the parties shall without undue delay discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in McAfee's notice as soon as is reasonably practicable.

12.4 Any amendments to this Data Processing Exhibit shall be in writing duly signed by authorised representatives of the parties hereto.

13. **BCRs**

13.1 If at any time after the Effective Date, McAfee elects to use BCRs, McAfee shall transfer Personal Data in accordance with its BCR, and McAfee will be regarded as the Data Exporter and the Supplier will be regarded as the Data Importer. Once approved, McAfee shall maintain such BCR's throughout the term of the Agreement. Should McAfee cease to abide by such BCR's, McAfee will agree (i) not to transfer any Personal Data outside the appropriate mechanisms provided under Sections 44 through 50 of the GDPR, and (ii) shall provide evidence of the chosen mechanism for the transfer of any Personal Data upon written request.

On behalf of the data exporter:

Name (written out in full): Flora J. Garcia
Position: Privacy/Security Attorney
Address: McAfee, LLC
2821 Mission College Blvd.
Santa Clara, CA 95054

Signature: 

On behalf of the data importer:

Name (written out in full):
Position:
Address:
Signature:

SCHEDULE 1
Standard Contractual Clauses: C-to-P Transfer

1. DEFINITIONS

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the sub-processor'* means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2. DETAILS OF THE TRANSFER

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 of Schedule 1 which forms an integral part of the Clauses.

3. THIRD-PARTY BENEFICIARY CLAUSE

- 3.1 The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6.1 and 6.2, Clause 7, Clause 8.2, and Clauses 9 to 12 as third-party beneficiary.
- 3.2 The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- 3.3 The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

4. OBLIGATIONS OF THE DATA EXPORTER

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 of Schedule 1;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

5. OBLIGATIONS OF THE DATA IMPORTER

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 of Schedule 1 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 of Schedule 1 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

6. **LIABILITY**

6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 6.1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 6.1 and 6.2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

7. **MEDIATION AND JURISDICTION**

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8. COOPERATION WITH SUPERVISORY AUTHORITIES

- 8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- 8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
- 8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 8.2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

9. GOVERNING LAW

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

10. VARIATION OF THE CONTRACT

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

11. SUB-PROCESSING

- 11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.
- 11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in Clause 6.1 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 11.1 shall be governed by the law of the Member State in which the data exporter is established.
- 11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

12. **OBLIGATION AFTER THE TERMINATION OF PERSONAL DATA PROCESSING SERVICES**

- 12.1 The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 12.1.

On behalf of the data exporter:

Name (written out in full): Flora J. Garcia
Position: Privacy/Security Attorney
Address: McAfee, LLC
2821 Mission College Blvd.
Santa Clara, CA 95054

Signature:



On behalf of the data importer:

Name (written out in full):

Position:

Address:

Signature:

APPENDIX 1 OF SCHEDULE 1

DESCRIPTION OF THE TRANSFERS (CONTROLLER TO PROCESSOR)

This Appendix forms part of the Transfer Clauses and must be completed and signed by the Parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The Data Exporter is McAfee, LLC, a global provider of security products and services.

Data importer

The Data Importer is _____. The Data Importer provides support services to the Data Exporter in relation to _____ under this Agreement, in the course of which it processes certain personal data as a processor.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

- Current, former, prospective employees.
- Current, former, prospective employees and their dependents.
- Employees of Corporate customers
- McAfee consumer customers and former consumer customers
- Customer contacts

Categories of Personal Data

The Personal Data transferred concern the following categories of data (please specify):

- Employees' names and contact information, including addresses, emails, phone numbers, IP addresses, employment history, education/qualifications, transaction history.
- Employees' names and contact information, including addresses, emails, phone numbers, IP addresses; employees' dependents' names and contact information, including addresses, emails, phone numbers, transaction history.
- McAfee Corporate customers' employees' names and business contact information, including addresses, emails, phone numbers, IP addresses, transaction history, payment information.
- McAfee Consumer customers' names and business contact information, including addresses, emails, phone numbers, IP addresses, transaction history, payment information.
- Customer contacts, including employees' names and business contact information, including addresses, emails, phone numbers, IP addresses, transaction history, payment information.

Special categories of data (if appropriate)

The Personal Data transferred concern the following special categories of data (please specify):

None.

If you are using / transferring any information about children or an individual's racial/ethnic origin; health; sexuality; political opinions; religious beliefs; criminal background or alleged offences; or trade union membership, this should be noted here:

<i>Please elaborate:</i>

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The Personal Data will be used to provide human resources benefits.

The Personal data will be used to provide information technology services to McAfee employees.

The Personal Data will be used to support McAfee in its provision of security services.

The Personal Data will be used to provide McAfee customers with security and data protection services.

The Personal Data will be used to enhance McAfee's threat defences.

The Personal Data will be used to provide McAfee customers with services.

The Personal Data will be used to provide licenses to McAfee products and services.

**APPENDIX 2 OF SCHEDULE 1
TECHNICAL AND ORGANIZATIONAL SECURITY MEASURES**

This Appendix 2 forms part of the Transfer Clauses and summarizes the technical, organisational and physical security measures implemented by the parties in accordance with Clauses 4(d) and 5(c).

In addition to any data security requirements set forth in the Agreement as amended by the Data Privacy Exhibit, Supplier shall comply with the following:

Physical Access Control <i>Unauthorised persons shall be prevented from gaining physical access to premises, buildings or rooms where personal data processing systems are located.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier prevents unauthorised individuals from gaining access to the processor's premises.	YES
2.	Supplier restricts access to data centres / rooms where data servers are located.	YES
3.	Supplier uses video surveillance and intrusion detection devices to monitor access to data processing facilities.	YES
4.	Supplier ensures that individuals who do not have access authorization (e.g. technicians, cleaning personnel) are accompanied always when accessing data processing facilities.	YES

System Access Control <i>Data processing systems must be prevented from being used without authorization.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier implements measures to prevent unauthorised personnel from accessing data processing systems.	YES
2.	Supplier provides dedicated user IDs for every authorised personnel accessing data processing systems for authentication purposes.	YES
3.	Supplier assigns passwords to all authorised personnel for authentication purposes.	YES
4.	Supplier ensures that all data processing systems are password protected to prevent unauthorised persons accessing any personal data: (a) after boot sequences; and (b) when left unused for a short period.	YES
5.	Supplier ensures that access control is supported by an authentication system.	YES
6.	Supplier has implemented a password policy that prohibits the sharing of passwords, outlines processes after a disclosure of a password, and requires the regular change of passwords.	YES
7.	Supplier ensures that passwords are always stored in encrypted form.	YES
8.	Supplier implements a proper procedure to deactivate user accounts when a user leaves the processor (or processor function).	YES
9.	Supplier implements a proper process to adjust administrator permissions when an administrator leaves the processor (or processor function).	YES

Data Access Control <i>Persons entitled to use a data processing system shall gain access only to the data to which they have a right of access, and personal data must not be read, copied, modified or removed without authorization in the course of processing or use and after storage.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier ensures that personal data cannot be read, copied, modified or removed without authorization during processing or use and after storage.	YES
2.	Supplier grants data access only to authorized personnel and assigns only the minimum data permissions necessary for those personal to fulfil their duties.	YES
3.	Supplier ensures that the personnel who use the data processing systems can access <u>only</u> the data to which they have a right of access.	YES
4.	Supplier restricts access to files and programs based on a "need-to-know-basis".	YES
5.	Supplier stores physical media containing personal data in secured areas.	YES
6.	Supplier has measures in place to prevent use/installation of unauthorised hardware and/or software.	YES
7.	Supplier has established rules for the safe and permanent destruction of data that are no longer required.	YES

Data Transmission Control <i>Personal Data must not be read, copied, modified or removed without authorization during transfer or storage and it shall be possible to establish to whom Personal Data was or is transferred.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier encrypts Personal Data during any transmission.	YES
2.	Supplier transports physical media containing Personal Data in sealed containers.	YES
3.	Supplier obtains shipping and delivery notes for proof of transmission.	YES
4.	Supplier prevents removal of Personal Data from its business computers or premises for any reason (unless McAfee has specifically authorised such removal for business purposes).	YES

Input Control <i>Supplier shall be able to examine and establish whether and by whom Personal Data have been entered into data processing systems, modified or removed.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier has implemented controls to log administrators' and users' data processing activities.	YES
2.	Supplier permits only authorised personnel to enter, modify and remove Personal Data within the scope of their duties.	YES

Job Control <i>Personal Data being processed in the performance of a service for a controller shall be processed solely in accordance with the Agreement in place between Supplier and McAfee and in accordance with McAfee's instructions.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier ensures that personal data is not used for any reasons other than for the purposes it has been contracted to perform or as otherwise instructed by McAfee.	YES
2.	Supplier implements measures to ensure staff members, Sub-processors and contractors process personal data strictly in accordance with contractual requirements and McAfee's instructions.	YES
3.	Supplier ensures that data is always physically or logically separated so that, in each step of the processing, the controller for whom the personal data is processed can be identified.	YES

Availability Control <i>Personal Data shall be protected against accidental destruction or loss.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier creates back-up copies of Personal Data stored in protected environments.	YES
2.	Supplier has the ability to restore Personal Data from those back-ups.	YES
3.	Supplier has in place contingency plans or business recovery strategies.	YES
4.	Supplier implements controls to use only authorised business equipment to perform the Services.	YES
5.	Supplier ensures that whenever a staff member leaves its desk unattended during the day and prior to leaving the office at the end of the day, he/she places materials containing Personal Data in a safe and secure environment such as a locked desk drawer, filing cabinet, or other secured storage space.	YES
6.	Supplier ensures secure disposal of documents or data carriers containing Personal Data.	YES
7.	Supplier has implemented network firewalls to prevent unauthorised access to systems and services.	YES
8.	Supplier ensures that each system used to process personal data runs an up to date antivirus solution.	YES
9.	Supplier encrypts Personal Data in transit and at rest.	YES

Purpose Separation Control <i>Personal Data collected for different purposes must be processed separately.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier ensures that each category of Personal Data it collects is processed only for the purposes for which it was collected.	YES
2.	Supplier ensures that different categories of data are always physically or logically separated so that, in each step of the processing, each category of data is processed only for the purposes for which it was collected.	YES

Organizational Requirements <i>The Supplier's internal organisation shall meet the specific requirements of data protection. In particular, Supplier shall take technical and organisational measures to avoid the accidental mixing of Personal Data.</i>		Implemented?
Supplier has implemented the following controls (without limitation):		
1.	Supplier has designated a data protection officer (or a responsible person for ensuring compliance with data protection requirements if a data protection officer is not required by Data Privacy Laws)	YES
2.	Supplier has obtained the written commitment of the employees to maintain confidentiality	YES
3.	Supplier has trained staff on data privacy and data security	YES
4.	Supplier undertakes regular audits to ensure its compliance with data protection requirements.	YES
5.	Supplier has undergone third party audit certification against the ISO 27001 or ISO 27018 standard	YES NO
6.	Supplier has other available audit certifications to prove its compliance with these technical and organisational measures	YES....NO

APPENDIX 3 OF SCHEDULE 1

AUTHORIZED THIRD PARTY SUB-PROCESSORS

Please complete the below by inserting name, address and services provided by 3rd party Sub-processors and Affiliates.

Name of Sub-processor	Personal Data being processed	Full address/ Location of processing	Processing activities