

McAfee Professional Service Terms

These Professional Service Terms (**Terms**) govern McAfee's provision of Services to Company. By executing a Statement of Work or placing an Order for Services, Company agrees to these Terms. If Company does not agree to these Terms, Company may not receive Services. If Company is accepting these Terms on behalf of another person or other legal entity, Company represents and warrants that Company has full authority to bind that person or legal entity to these Terms. Capitalized terms used in these Terms have the meaning assigned to them in the definitions section at the end of these Terms or elsewhere in these Terms. The interpretation clause in the interpretation section at the end of these Terms sets out the rules of interpretation for these Terms.

1. ORDER; AND PERFORMANCE

- 1.1. The Services may be specified in a Statement of Work or an Order, or as required by McAfee from time to time. As of the Agreement Effective Date, the Agreement constitutes the terms and conditions that govern McAfee's provision of Services to Company.
- 1.2. McAfee may use sub-contractors to perform its contractual obligations under the Agreement. If McAfee uses subcontractors, McAfee will be fully responsible for supervising and directing their performance.

2. SCHEDULING OF THE SERVICES

- 2.1. The parties will agree on a start date for the Services, which will be no later than six (6) months from the Agreement Effective Date. Unless agreed otherwise in writing, McAfee will perform the Services within one (1) year of the Agreement Effective Date. Company acknowledges and agrees that if McAfee has not completed the Services within one (1) year of the Agreement Effective Date for reasons that are not attributable to McAfee, McAfee may, at its sole discretion, cancel the unperformed Services and retain any pre-paid fees for the unperformed Services.
- 2.2. Any completion times specified in the SOW or the Order are only estimates for Company's and McAfee's resource scheduling.
- 2.3. Company is permitted to reschedule the start date of the Services one time, with at least five (5) Business Days prior notice, without incurring additional fees. If Company request, and McAfee agrees to any additional or alternative rescheduling, suspension or delays, Company will pay an additional fee equal to twenty-five percent (25%) of the applicable fees in each instance where McAfee accommodates the rescheduled or delayed Services.

3. **ACCESS:** Company will provide McAfee with sufficient, free, safe and timely access to Company's facilities, computer systems and networks to enable performance of the Services.

4. TERMINATION

- 4.1. **Termination for cause:** Either party may terminate this Agreement immediately for cause as provided otherwise in these Terms or if:
 - (a) the other party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first party specifying the breach and requiring it to be remedied (except for non-payment in which the cure period is ten (10) days), or if the breach is incapable of remedy.
 - (b) the other party or its property is subject to insolvency or receivership procedures;
 - (c) the other party becomes insolvent or unable to pay its debts as they mature;
 - (d) the other party makes an assignment for the benefit of creditors; or
 - (e) the other party becomes the subject of any other proceeding under any bankruptcy, insolvency or debtor's relief law.
- 4.2. **Suspension of performance:** McAfee may immediately suspend performance under this Agreement if Company, in McAfee's reasonable opinion, fails to comply with the terms of this Agreement.
- 4.3. **Effect of termination:** Except for termination for cause due to McAfee, all Orders for Services placed by Company and accepted by McAfee before the Agreement ends will remain effective, due and payable in accordance with the relevant SOW or Order, regardless of whether the Services have been performed.

5. **INSURANCE:** Each party must maintain insurance with coverage at least equal to what a prudent company would carry under similar circumstances or as required by law, and will provide details of its insurance coverage upon request.

6. PAYMENT; TAXES

- 6.1. **Payment:** The Service fees are specified in the SOW or the Order. Unless Company is purchasing the Services through an Authorized Partner, in which case payment obligations will be exclusively between the Authorized Partner and Company, Company will pay McAfee all fees within thirty (30) days of the invoice date without any right to offset, counterclaim, holdback or deduction. McAfee reserves the right to charge interest for late payments on the unpaid amounts calculated as the lesser of (a) 1.5% per month; or (b) the highest rate allowed by relevant law, accrued and compounded from the date due until payment is received by McAfee.
- 6.2. **Transaction Taxes:** If Company purchases the Services directly from McAfee, Company will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Company under these Terms (**Transaction Taxes**). McAfee will separately state on its invoices the Transaction Taxes that McAfee is required to collect from Company under applicable law. Company will provide proof of any exemption from Transaction Taxes to McAfee at least fifteen (15) Business Days before the due date for paying an invoice. If McAfee does not collect the required Transaction Taxes from Company, but is subsequently required to remit the Transaction Taxes to any taxing authority, Company will promptly reimburse McAfee for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of McAfee.
- 6.3. **Withholding Taxes:** All payments due from Company will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If Company is required by applicable law to deduct or withhold income taxes from amounts payable to McAfee under this Agreement (**Withholding Taxes**), Company will remit, and provide McAfee with evidence that Company has remitted, the Withholding Taxes to the appropriate taxing authority and pay to McAfee the remaining net amount. Company will provide written notice to McAfee of its intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days

before the due date for any payments under this Agreement and will cooperate with McAfee to reduce any Withholding Taxes. If McAfee provides Company with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Company will apply the lower rate.

6.4. If Company purchases the Services through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner or Company, and the rules in Sections 6.2 and 6.3 do not apply as between McAfee and Company.

6.5. **Income Taxes:** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

7. CONFIDENTIALITY

7.1. Each party acknowledges that it may have access to Confidential Information of the other party in connection with this Agreement, and that each party's Confidential Information is of substantial value to the Disclosing Party, which could be impaired if it were improperly disclosed to third parties or used in violation of this Agreement.

7.2. Each Recipient of Confidential Information under this Agreement must:

- (a) keep the Disclosing Party's Confidential Information confidential and protect it at least to the same extent it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information;
- (b) not use the Disclosing Party's Confidential Information in any way for its own account or the account of any third party except to perform its duties, exercise its rights or is otherwise authorized under these Terms; and
- (c) not disclose the Disclosing Party's Confidential Information except to perform its duties or exercise its rights under this Agreement or as otherwise authorized under these Terms, provided that:
 - (i) any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
 - (ii) the Recipient's employees, contractors or agents in receipt of the Confidential Information are under an obligation of confidentiality no less stringent than that set forth in this section.

7.3. Notwithstanding the restrictions set out above, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:

- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
- (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
- (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

7.4. Company will immediately notify McAfee if Confidential Information of McAfee is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this section, McAfee is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.

7.5. Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the parties at the time), each party will return, destroy or delete permanently (at the Disclosing Party's election) the other party's Confidential Information.

7.6. On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.

7.7. **Feedback:** Company agrees that McAfee has the unrestricted right to use suggestions and feedback provided by Company regarding the Services and other products and services of McAfee and its Affiliates, without notice to, payment to or consent from Company, and that such suggestions and feedback will be the Confidential Information of McAfee, and not Company.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. As between the parties, (a) Company owns all right, title, and interest in and to any proprietary information, materials, or other items provided by Company to McAfee under the Agreement (**Company IP**) and all Intellectual Property Rights therein; and (b) McAfee owns all rights, title, and interest in and to all McAfee Materials and Deliverables, including all Intellectual Property Rights therein. The Services will not be interpreted as 'work for hire'. Company may not exercise any right, title and interest in and to the Services, McAfee Materials, Deliverables or any related Intellectual Property Rights, except for the limited usage rights granted to Company in the Agreement.

8.2. Subject to the terms and conditions of the Agreement, including payment of fees, (a) McAfee grants to Company a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to use and reproduce, for Company's own internal business operations, the Deliverables (and any McAfee Materials solely as provided by McAfee as part of the Deliverables); and (b) Company grants to McAfee a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of any applicable SOW, to use, reproduce, and distribute to McAfee's Representatives Company IP to perform the Services and provide the Deliverables under the Agreement. The Services are strictly confidential to McAfee.

9. WARRANTIES; EXCLUSIONS; DISCLAIMERS

9.1. **Warranty:** McAfee warrants that the Services will be performed in a professional manner consistent with relevant industry standards (**Services Warranty**).

9.2. **Exclusive Remedy:** Provided Company notifies McAfee in writing and in sufficient detail of a breach of the Services Warranty within thirty (30) days after provision of the non-conforming Services, McAfee will, at its option, (a) re-perform the Services at no additional cost to Company or (b) credit to the entity that paid McAfee the fees associated with the non-conforming Services. This section states Company's sole and exclusive remedy, and McAfee's sole and exclusive liability, with respect to any breach of warranty relating to the Services. The Services Warranty is personal to Company and may not be assigned, transferred or passed-through to any third party.

9.3. **Disclaimer of warranties:** EXCEPT FOR THE SERVICES WARRANTY, THE SERVICES ARE PROVIDED "AS IS". MCAFEE DOES NOT WARRANT THAT: (A) VULNERABILITY SERVICES, TO THE EXTENT PERMITTED BY LAW, MCAFEE MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES, OR EXPRESS AND IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING QUALITY, CONFORMITY TO ANY

REPRESENTATION OR DESCRIPTION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT; OR THAT MCAFEE WILL FINAL ALL VULNERABILITIES.

10. **LIMITATION OF LIABILITY:** EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL PAYMENTS PAID OR PAYABLE BY COMPANY TO MCAFEE UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRIOR TO THE CLAIM. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORSEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES (a) COMPANY'S PAYMENT OR INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; OR (b) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

11. INDEMNIFICATION

- 11.1. **Company indemnification obligations:** Unless prohibited by law, Company will unconditionally indemnify, and defend McAfee, its Affiliates, and their officers, directors, employees, contractors and agents (each a **McAfee Indemnified Party**) against any claims, liabilities and expenses (including court costs and reasonable attorneys' fees) that a McAfee Indemnified Party incurs as a result of or in connection with:
- (a) any third-party claims arising from:
 - (i) Company's failure to obtain any consent, authorization or license required for McAfee's use of data, software, materials, systems, networks or other technology provided by Company under the Agreement;
 - (ii) Company's use of the Services in a manner not expressly permitted by the Agreement;
 - (iii) McAfee's compliance with any technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
 - (iv) any claims, costs, damages and liabilities whatsoever asserted by any Company Representative; or
 - (v) any violation by Company of applicable laws or regulations; and
 - (b) any reasonable costs and attorneys' fees required for McAfee to respond to a subpoena, court order or other official government inquiry regarding Company's use of the Services.

11.2. McAfee indemnification obligations

- (a) McAfee will indemnify Company and, at McAfee's election, defend Company against a third-party claim asserted against Company in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for McAfee's trade secret misappropriation and the claim is asserted against the Services or the Deliverables alone and not in combination with anything else, or solely a combination of the Services or Deliverables.
- (b) **Exclusions:** Notwithstanding anything to the contrary in this Agreement, McAfee will not indemnify or defend Company for claims asserted, in whole or in part, against or resulting from:
 - (i) technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
 - (ii) modifications or programming to the Services or Deliverables that were made by anyone other than McAfee; or
 - (i) the Services' or Deliverables' alleged implementation of some or all of a Standard.
- (c) **Remedies:** McAfee may, in its sole discretion and at its own expense, with respect to any Services or Deliverables that are subject to a claim:
 - (i) procure Company with the right to continue using the affected Services or Deliverables;
 - (ii) replace the affected Services or Deliverables with non-infringing Services or Deliverables;
 - (iii) modify the affected Services or Deliverables so they are non-infringing; or
 - (iv) terminate the provision of the Services and, if the fees were paid in advance, refund the residual value of the fees paid by Company for the affected Services, depreciated using a straight-line method of depreciation over a three (3) year period from the date of provision of the affected Services.

- 11.3. **Indemnification procedure:** The indemnified party (**Indemnitee**) will: (a) provide prompt written notice to the indemnifying party (**Indemnitor**) of the claim (provided that the failure to provide timely notice that prejudices the Indemnitor will relieve the Indemnitor of its obligations under this section to the extent the Indemnitor has been prejudiced and the failure to provide timely notice will relieve the Indemnitor of any obligation to reimburse the Indemnitee for its attorney's fees incurred prior to notification); (b) reasonably cooperate in connection with the defense or settlement of the claim; and (c) give the Indemnitor sole control over the defense and settlement of the claim, provided that any settlement of a claim will not include a specific performance obligation or admission of liability by the Indemnitee.

- 11.4. **Personal and exclusive indemnity:** The foregoing indemnities are personal to the parties and may not be transferred to anyone. This sectionError! Reference source not found. states the parties' entire indemnification obligations, and Company's exclusive remedy for claims involving infringement of Intellectual Property Rights.

12. PRIVACY, HANDLING OR PROCESSING OF PERSONAL DATA

- 12.1. Each party must comply with all applicable laws governing the collection, use and disclosure of Personal Data and must obtain any required consents with respect to the handling of Personal Data. McAfee manages Personal Data in accordance with McAfee's Privacy Policy available at <https://www.mcafee.com/au/about/legal/privacy.aspx>.
- 12.2. As Personal Data may originate from various jurisdictions and as McAfee may be unaware of those jurisdictions in the provision of the Services, Company is solely responsible for ensuring that the parties enter into any necessary additional agreements as required by applicable data protection laws. To the extent any Personal Data belongs to residents of the European Economic Area (the EEA), McAfee's processing of such data will comply with the applicable version of the McAfee Data Processing Agreement (**DPA**) (including if requested the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries approved by EC Commission Decision of 5 February 2010) found on McAfee's website, if requested by Company and executed by the parties. Upon execution, the DPA is incorporated herein by reference. In the event of any conflict between the terms of the DPA and the Agreement or McAfee's Privacy Policy, the terms of the DPA will take precedence insofar as the Personal Data of residents of the EEA is concerned. McAfee will comply with McAfee's Privacy Policy and the applicable technical and organizational measures set forth in the DPA.

- 12.3. Company grants to McAfee a non-exclusive, perpetual right and license to use, reproduce and disclose product, support, or services-related information (excluding Personal Data and Company Confidential Information) and material that is aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual or to Company for product improvement (including content synchronization, device tracking, troubleshooting), internal research to enhance McAfee's understanding of Malware, threats, and vulnerabilities (including detecting and reporting threats and vulnerabilities on Company's and Users' computer endpoints and networks) to improve overall security for users generally and in accordance with McAfee's Privacy Policy. This includes compiling statistical and performance information related to the provision of the Services and making such information publicly available. McAfee retains all rights in such aggregated and anonymous data.
- 12.4. Each party will bear all technical, operational and financial consequences resulting from the privacy regulations concerning its activity. Company will, in its use of the Services and Deliverables, comply with its obligations under privacy regulations in respect of its processing of Personal Data and any processing instructions it issues to McAfee. Company represents that it has all rights, permissions and authorizations necessary for McAfee to process Personal Data under this Agreement. Company agrees that this Agreement is its complete and final instruction to McAfee in relation to the processing of Personal Data.

13. COMPLIANCE WITH LAWS

- 13.1. Each party will comply with the applicable national, state, and local laws and regulations with respect to its rights and obligations under this Agreement, including applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws.
- 13.2. Company will not, directly or indirectly, export, transmit, permit access or use any Services or technical data (or any part of Services or technical data) or system or service incorporating any Services to or in any country to which export, transmission or access is restricted by regulation, statute, or other law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any other competent governmental entity that may have jurisdiction over export or transmission. Company will not use, transfer or access any Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license.
- 13.3. Company acknowledges and agrees that certain Services containing encryption may require authorization from the U.S. and other competent authorities including the European Union, prior to export. Company also acknowledges and agrees that certain Services containing encryption may be subject to import or use restrictions in other countries. Additional information regarding exporting and importing Services may be found on McAfee's "Export Compliance" webpage (www.mcafee.com/us/about/export-compliance.aspx), as updated from time to time.
- 13.4. If McAfee receives notice that Company is or becomes identified as a sanctioned or restricted party under applicable law, McAfee will not be obligated to perform any of its obligations under this Agreement if such performance would result in violation of the sanctions or restrictions.

14. TRAINING SERVICES

- 14.1. **Training Services:** The terms and conditions in this Section 14 apply to any training Services provided by McAfee to Company. McAfee will provide confirmation of the training Services to Company prior to the start date of the training course. Company must book all courses for training Services within one (1) year of the date of McAfee's invoice for those training Services otherwise McAfee may, at its sole discretion, cancel all or a portion of the training Services that have not been booked by Company. Company agrees that any fees for training Services are not refundable or available for credit or exchange, except as expressly agreed to in writing by McAfee.
- 14.2. **Training Services fees:** McAfee's fees for training Services will cover the fees for the trainer at McAfee's training center, use of the training systems, reasonable refreshments and course materials for participants. McAfee is not liable for any travel or accommodation costs incurred by Company or any of its attendees to attend the relevant training course. Unless agreed otherwise in writing, McAfee will provide all training Services in English.
- 14.3. **Payment:** Company must pay all training Services fees in accordance with McAfee's invoice to ensure that McAfee has received the training Services fees at least fourteen (14) days prior to the start date of the relevant training course.
- 14.4. **Cancellation**
- (a) **By Company:** Company must cancel any scheduled training Services in writing within fourteen (14) days of the training course start date to avoid paying fees. Company will pay McAfee the following fees for training Services cancellations within less than fourteen (14) days:
- (i) 50% of the fees costs and expenses relating to the cancelled training course (including invoicing costs for this amount) if McAfee receives Company's cancellation notice between seven (7) and fourteen (14) days of the training course start date; or
 - (ii) the full amount of fees costs and expenses relating to the cancelled training course (including invoicing costs for this amount) if McAfee receives Company's cancellation notice less than seven (7) days prior to the training course start date.
- (b) **By McAfee**
- (i) McAfee may cancel any training Services without liability or penalty if it has not receiving the related training Services fees in accordance with Section 14.3.
 - (ii) McAfee may cancel training Services at any time for convenience. If McAfee is unable to provide a suitable substitute training course, McAfee's sole liability to Company will be to refund the training Services fees paid by Company. For the avoidance of doubt, McAfee will not be liable for any travel or hotel costs associated with the cancellation under this section.
- 14.5. **Substitution and Rescheduling**
- (a) Company may substitute training course attendees with employees with substantially equivalent qualifications required for participation in the training course, at Company's discretion. However, McAfee reserves the right to refuse or to limit any training Services if McAfee considers that a Company attendee fails to satisfy the requirements for the relevant training course. Company may reschedule the training course, subject to availability, by providing McAfee with fourteen (14) days prior written notice.
- (b) McAfee reserves the right to use substitute instructors, to modify the training Services content slightly and to make changes to the dates and locations of any scheduled training course upon notice to Company. If Company cannot attend because of the changes, Company may rebook for another available course. McAfee will not be liable for any Company costs associated with the rescheduling.

(c) **Conduct:** McAfee reserves the right to refuse, limit or cancel any training Services if a Company attendee, in the sole opinion of McAfee, has displayed unreasonable behavior or is deemed to be violent, abusive or disruptive. In such case, Company will not be entitled to any refunds.

14.6. **Training Materials:** All training materials and systems that McAfee provides as part of the training Services are provided on an “as-is” basis, without warranty of any kind, whether express, implied, statutory or otherwise including without limitation as to quality, reliability, timeliness, usefulness, sufficiency and accuracy.

15. GENERAL PROVISIONS

15.1. **Relationship:** The parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. Neither party intends this Agreement to benefit, or create any right or cause of action in or on behalf of, any person or entity other than the parties and listed Affiliates. This Agreement is not intended to create a third-party beneficiary of any kind. Company must not represent to any third party that it has any right to bind McAfee in any manner and Company will not to make any representations or warranties on behalf of McAfee.

15.2. **Severability:** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.

15.3. **No waiver:** A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.

15.4. Force Majeure; other excusable failures or delays in performance

(a) Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.

(b) McAfee's failures or delays in its performance are excused to the extent they result from:

(i) Company's acts or omissions, or those of its employees, agents, users, affiliates or contractors;

(ii) notwithstanding the generality of the subsection above, Company's failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement, which task, obligation, or responsibility is a condition or requirement for a McAfee task, obligation, or responsibility;

(iii) reliance on instructions, authorizations, approvals or other information from Company's Representative; or

(iv) acts or omissions of third parties (unless directed by McAfee).

15.5. **Governing law:** All disputes arising out of or relating to this Agreement or its subject matter will be governed by the following substantive laws, excluding rules relating to conflict of laws:

(a) the laws of the State of New York, if Company purchased the Services in the United States, Mexico, Central America, Canada, South America or the Caribbean;

(b) the substantive Federal laws of the United States of America if Company is a Federal Government entity, and in such case, any disputes relating to this Agreement shall be resolved in accordance with the FAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109.

(c) the laws of the Republic of Ireland, if Company purchased the Services in Europe, Middle East, Africa, or the region commonly referred to as Oceania (except Australia and New Zealand);

(d) the laws of Japan, if Company purchased the Services in Japan; or

(e) the laws of the Republic of Singapore, if Company purchased the Services in Asia Pacific (including Australia and New Zealand).

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.

15.6. **Jurisdiction:** The following courts will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter:

(a) the United States District Court for the Southern District of New York and state courts located in the state of New York, when New York or Federal law applies;

(b) the courts in the Republic of Ireland, when the law of Ireland applies;

(c) the courts in Japan, when the law of Japan applies; or

(d) the courts in the Republic of Singapore when the law of Singapore applies.

15.7. Entire Agreement, order of precedence and amendments

(a) This Agreement constitute the entire understanding between McAfee and Company relating to its subject-matter and supersede all oral or written proposals, and all communications between the parties relating to its subject matter. The terms of this Agreement will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Company, whether or not expressly rejected by McAfee.

(b) If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency unless expressly agreed otherwise in any subordinate document, these Terms will prevail over the terms of any SOW or Order.

15.8. **Notices:** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the party giving it, and addressed to the relevant McAfee entity, “Attention Legal Department”, at the corresponding address, or to Company at the contact information Company provided when purchasing or registering for the Services. Notices will be considered delivered when received if delivered by hand with receipt, the next business day after sending it by pre-paid, nationally-recognized, overnight air courier with tracking capabilities, or five (5) Business Days after being sent by registered or certified airmail, return receipt required, postage prepaid, to the address mentioned above.

15.9. **Additional documents and references:** References to hyperlinked terms in this Agreement are references to the terms or content linked to the hyperlink (or the replacement hyperlink as McAfee may identify from time to time) as amended from time to time. Company acknowledges

that the terms or content in the hyperlink are incorporated in this Agreement by reference and that it is Company's responsibility to review the terms or content in the hyperlinks referenced in this Agreement.

14.9 **Assignment:** McAfee provides the Services to Company for its own internal business purposes and not for the benefit of third parties. Company may not sublicense, assign or transfer its rights under this Agreement without McAfee's prior written consent. Any attempt by Company to sublicense, assign or transfer any of its rights, duties or obligations under this Agreement, whether directly, or indirectly by merger or acquisition, will be null and void.

14.10 **Survival:** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 6, 8, 10, 15 & 16.

16. DEFINITIONS AND INTERPRETATION

16.1. In these Terms:

(a) **Affiliates** means with respect to Company, means any entity that, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such entity or one or more of the other Affiliates of that entity (or a combination thereof).

For the purpose of this definition, an entity controls another entity if and as long as the first entity:

(v) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;

(vi) can elect a majority of the directors of the other entity; or

(vii) provides day to day management of such entity under contract or as managing general partner.

Affiliate, with respect to McAfee, means any direct or indirect subsidiary of McAfee, LLC.

(b) **Agreement** means these governing Terms together with any SOW or Order, as applicable.

(c) **Agreement Effective Date** means the date of the last signature of a SOW or the date of McAfee's acceptance of an Order.

(d) **Authorized Partner** means any of McAfee's distributors, resellers or other business partners that are authorized by McAfee in writing to sell Services.

(e) **Business Day** means any day other than a Saturday, Sunday, statutory or public holiday in the place where the Services are performed.

(f) **Confidential Information** means any information (regardless of the form of disclosure or the medium used to store or represent it) of a party (**Disclosing Party**), including trade secrets and technical, financial or business information, data, ideas, concepts or know-how, that:

(i) is designated as "confidential" or by similar words by the Disclosing Party 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) the receiving party (**Recipient**) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

(iii) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;

(iv) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;

(v) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or

(vi) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.

(g) **Company** means the entity to which the Services are to be provided.

(h) **Consequential Damages** means indirect, special, incidental, punitive, exemplary, consequential or extra-contractual damages of any kind, including third party claims, loss of profits, loss of goodwill, loss of personnel salaries, computer or system failure or malfunction, costs of obtaining substitute cloud services, work stoppage, denial of access or downtime, system or service disruption or interruption, or any lost, damaged, or stolen data, information or systems as well as the costs of restoring any lost, damaged, or stolen data, information or systems.

(i) **Deliverables** means any tangible deliverables that McAfee provides to Company under the Agreement.

(j) **Derivative Works** means a work that is based on one or more preexisting works (such as a revision, translation, dramatization, motion picture version, abridgment, condensation, enhancement, modification, or any other form in which preexisting work may be recast, transformed or adapted) which, if created without the authorization of the copyright owner of the preexisting work, would constitute copyright infringement.

(k) **Force Majeure Event** means any event beyond a party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by McAfee's vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.

(l) **Intellectual Property Rights** means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:

(i) copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights;

(ii) any application or right to apply for any of the rights referred to in paragraph (a); and

(iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in paragraphs (i) and (ii).

(m) **Malware** means applications, executable code or malicious content that McAfee considers to be harmful.

(n) **McAfee** means either:

(i) the relevant McAfee entity listed in Exhibit A (Territory Table), which has primary responsibility for providing the Services in the Territory within which Company is located; or

(ii) any McAfee entity as stated in the SOW.

- (o) **McAfee Materials** means all Intellectual Property Rights that are:
 - (i) owned or licensed by McAfee or its third-party licensors prior to performing the Services;
 - (ii) developed, acquired, conceived or reduced to practice by McAfee or its agents during the provision of the Services, and
 - (iii) modifications, enhancements and Derivative Works of the Intellectual Property Rights referred to in paragraphs (i) and (ii).
- (p) **Order** means a purchase order for Services from Company to McAfee or an Authorized Partner, as applicable.
- (q) **Personal Data** means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under the General Data Protection Regulation or other applicable data protection laws.
- (r) **Representative** means a party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.
- (s) **Services** means the specific tasks, functions, responsibilities, Deliverables and other professional services to be provided by McAfee to Company under these Terms, and as described in an applicable SOW or Order.
- (t) **Standard** means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP and ETSI.
- (u) **Statement of Work or SOW** means a statement of work entered into from time to time by the parties that describes the Services to be performed by McAfee, the parties' respective obligations regarding those Services, and any other related and mutually agreed terms, conditions, and dependencies.
- (v) **Territory** means the country where Company is incorporated.

16.2. In these Terms, unless a contrary intention appears:

- (a) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (b) headings are for ease of reference only and do not affect the interpretation or meaning of this Agreement;
- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) other grammatical forms or parts of speech of defined words or phrases have corresponding meanings;
- (e) a reference to a clause, paragraph, exhibit, schedule or other annexure is a reference to a clause or paragraph of or exhibit, schedule or annexure to this Agreement;
- (f) the words "include", "including", "such as" and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (h) the meaning of this Agreement will be interpreted based on its entirety and not just on isolated parts.

EXHIBIT A - TERRITORY TABLE

Region	Territory	McAfee Entity	Laws and relevant courts
Americas	United States, Mexico, Central America, South America, Caribbean	McAfee, LLC	New York, N.Y., USA
Americas	U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States	McAfee Public Sector LLC	New York City, N.Y., USA
Americas	Canada	McAfee Canada ULC	Ontario, Canada
EMEA	Italy	McAfee Italy S.r.l.	Italy
EMEA	France	McAfee France S.A.S.	France
EMEA	Spain	McAfee Security Spain, S.L.	Spain
EMEA	Germany	McAfee Germany GmbH	German
EMEA	Austria	McAfee Austria GmbH	Austria
EMEA	Switzerland	McAfee Switzerland GmbH	Switzerland
EMEA	United Kingdom	McAfee Security UK Ltd	England
EMEA	Sweden	McAfee Sweden Aktiebolag	Netherlands
EMEA	Finland	McAfee Netherlands B.V.	Netherlands
EMEA	The Netherlands	McAfee Netherlands B.V.	Netherlands

EMEA	South Africa	McAfee Security South Africa Proprietary Limited	Netherlands
EMEA	Denmark	McAfee Security Denmark, filial af McAfee Netherlands B.V., Holland	Danish
EMEA	Turkey	McAfee Turkey Guvenlik Hizmetleri Limited Sirketi	Turkey
EMEA	Dubai	McAfee Netherlands B.V. – Dubai Branch	Netherlands
EMEA	Israel	McAfee (Israel) Ltd	Israel
EMEA	Saudi Arabia	McAfee Netherlands B.V.	Netherlands
EMEA	Belgium	McAfee Belgium	Netherlands
EMEA	Poland	McAfee Security Poland spółka z ograniczoną odpowiedzialnością	Netherlands
EMEA	Republic of Ireland	McAfee Ireland Limited	Ireland
EMEA	All countries in Europe, Middle East and Africa not explicitly listed above	McAfee Netherlands B.V.	Netherlands
APAC	Australia	McAfee Security Australia Pty Ltd	New South Wales, Australia
APAC	China – Beijing	McAfee (Beijing) Security Software Co. Ltd.	Singapore
APAC	New Zealand	McAfee Security New Zealand	Singapore
APAC	Singapore and rest of APAC	McAfee (Singapore) Pte Ltd	Singapore
JAPAN	Japan	McAfee Co., Ltd.	Japan