

## McAfee Cloud Services Agreement

McAfee, LLC. (“McAfee”) and Customer (as identified in the Grant Letter) agree to the following McAfee Cloud Services Agreement (“Subscription Agreement”), the Supplemental Terms and Conditions set forth below or otherwise included with the pertinent Cloud Services or Software (“Supplemental Terms”) and the terms as specified in the Grant Letter. If Customer does not agree to the terms in the Grant Letter, Customer may not access or use such Cloud Services or Software, and Customer must immediately notify McAfee to cancel the Cloud Services identified in the Grant Letter prior to accessing or using the Cloud Services or Software.

BY ACCESSING OR USING THE CLOUD SERVICES OR SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT (INCLUDING THE APPLICABLE SUPPLEMENTAL TERMS AND GRANT LETTER) ON BEHALF OF CUSTOMER, AND YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT.

1. **DEFINITIONS.** For purposes of the Agreement, the following definitions apply:
  - a. “Agreement” means this Subscription Agreement, the applicable Supplemental Terms, the Grant Letter and any materials available on the McAfee website that are specifically incorporated by reference.
  - b. “Annual Customers” means Customers who have a valid annual or multi-year contract for Cloud Services.
  - c. “Channel Partner” means the McAfee partner identified in the Grant Letter through which the Customer purchased the Cloud Services.
  - d. “Cloud Client Software” means Software that facilitates Customer’s access and use of the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.
  - e. “Cloud Services” means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
  - f. “Control” means the possession of beneficial ownership of more than fifty percent (50%) of the voting power of the person or entity entitled to vote in the election of directors or, in the case of an entity that is not a corporation, the election of the corresponding managing authority.
  - g. “Customer Data” means any data provided by Customer to McAfee by and through the Software, Cloud Services, Support and any other products or services offered under this Agreement. Customer Data includes Personal Data as defined in Section 9 (Privacy).
  - h. “Documentation” means explanatory materials created by McAfee in printed, electronic or online form that accompany the Cloud Services or Software.
  - i. “Grant Letter” means any written (electronic or otherwise) confirmation notice that McAfee issues to Customer confirming the Licensed Product and Support purchased, License Period, and other access and use details. A Grant Letter includes a Welcome Letter or other purchasing documentation entered into between Customer and McAfee or Channel Partner for the Licensed Product.
  - j. “McAfee” means (i) McAfee, LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States

(except as provided in subclause (vi), below), Canada, Mexico, Central America, South America, or the Caribbean, (ii) McAfee Ireland Limited, with its registered offices located at Pipers Way, Swindon, Wiltshire SN3 1NJ, United Kingdom, if the Software is purchased in Europe, the Middle East, or Africa, (iii) McAfee (Singapore) Pte Ltd., with a trading address located at 69/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania, (iv) McAfee Co. Ltd., with offices located at Kokusai Building 5F, 1-1, Marunouchi 3-chome, Chiyoda-ku, Tokyo, 100- 0005, Japan, if the Software is purchased in Japan, (v) McAfee (Beijing) Security Software Co. Ltd., with a trading address located at Room IIA/B, First Floor, No. 999 Ying Lun Road, Waigaoqiao Free Trade Zone, Pudong, Shanghai, 200131 China, if the Software is purchased in China (in RMB), or (vi) McAfee Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.

- k. "Intellectual Property Rights" means all intellectual property rights and industrial property rights (throughout the universe, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including, without limitation, patent rights, copyrights, trade secret rights, and trademark rights.
- l. "License Period" means, with respect to Cloud Services or Software, the time period for which Customer has purchased the right to receive the Cloud Services or Software, or, with respect to Cloud Client Software, the time period for which Customer has purchased the right to receive Cloud Services that are accessed through the Cloud Client Software. The initial License Period is as specified in a Grant Letter.
- m. "Licensed Product" means all Cloud Services, Software or Documentation to which Customer has rightful access through a valid Grant Letter.
- n. "Malware" means applications, executable code, or malicious content that McAfee deems to be harmful.
- o. "Monthly Customer" means Customers who have a valid monthly contract for Cloud Services with no annual or multi-year commitment.
- p. "Node" means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homemaker/teleworker home-based systems, file and print servers, e-mail servers, Internet gateway devices, storage area network servers (SANS), terminal servers and portable workstations connected or connecting to the server(s) or network. For Cloud Services, Node may also mean an instance of the specific Cloud Service or the number of Users or seats with access to the Cloud Services.
- q. "Open Proxy" means an HTTP server that allows third-party relay or proxy of web traffic.
- r. "Open Relay" means an SMTP Email server that allows third-party relay of Email messages.
- s. "Software" means each McAfee software program in object-code format that is licensed from McAfee under this Agreement, including Updates and Upgrades, or any object-code delivered to Customer.

- t. "Standard" means any generally recognized technology or technical standard promulgated, distributed, specified, or published by an entity whose activities include developing, coordinating, promulgating, amending, reissuing, or otherwise producing standardized technology specifications or protocols for adoption by product manufacturers or the public. "Standards" include "de facto" technology or technical standards that are initially introduced by one or more entities, which then become more widely adopted by others in other products; includes features characterized as "mandatory," "optional," and their equivalents; and includes versions characterized as "draft."
  - u. "Subsidiary" refers to any entity Controlled by Customer, but only for so long as that Control exists.
  - v. "Support" means technical support provided as described in the then-current McAfee Technical Support and Maintenance Terms, which are posted on McAfee's website at: [http://www.mcafee.com/us/support/support\\_terms\\_n\\_conditions.html](http://www.mcafee.com/us/support/support_terms_n_conditions.html).
  - w. "Throughput" means the amount of data or files sent from the Customer through the Cloud Services.
  - x. "Updates" means updates to the content of the Cloud Services or Software, and include without limitation all DATs ("DATs" or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, and database updates for the Cloud Services or Software, which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
  - y. "Upgrades" means any and all improvements in the Cloud Services or Software which are made generally available to McAfee's customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
  - z. "User" means a unique individual whom Customer has authorized to use the Cloud Services or Software pursuant to Customer's license under this Agreement.
- 2. RIGHT OF USE AND RESTRICTIONS.**
- a. Right to Access and Use Cloud Services. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide right to access and use the Cloud Services described in the Grant Letter, for up to the number of Users, Nodes, Throughput or other metering mechanism specified in the Grant Letter, solely for Customer's internal business use during the License Period. Unless otherwise specified by McAfee, Cloud Services that are designed to be accessed through Software as provided by McAfee may be accessed only through such Software.
  - b. License to Install and use Cloud Client Software. Subject to the terms of this Agreement, McAfee grants Customer a nonexclusive, nontransferable, worldwide license to install and use the Cloud Client Software made available by McAfee to Customer in connection with the Cloud Services, for up to the number of copies specified in the Grant Letter, on equipment owned or operated by or on behalf of Customer, as needed to access and use the Cloud Services described in the Grant Letter, solely for Customer's internal business use during the License Period. The Cloud Client Software is licensed, not sold, to Customer under the terms of this license. Customer may make a reasonable number of copies of the Cloud Client Software for back-up, archival, and disaster recovery purposes during the License Period. The Cloud Client Software must be de-installed and destroyed at the end of the License Period. If Customer enters into a contract in which a third party manages Customer's information

- technology resources ("Managing Party"), Customer may enable such Managing Party to use the Cloud Client Software on Customer's behalf, provided that (a) the Managing Party only uses the Cloud Client Software and Cloud Services for Customer's internal operations; (b) the Managing Party agrees to be bound by the terms of this Agreement, (c) Customer provides McAfee with written notice that a Managing Party will be using the Cloud Client Software on Customer's behalf, and (d) Customer remains responsible for all use of the Cloud Client Software and Cloud Services by the Managing Party.
- c. Updates and Upgrades. Customer must have an active subscription to the Cloud Services, or have an active Support Agreement for the Cloud Services, as applicable, to receive Updates or Upgrades for the Cloud Services, Cloud Client Software, and any On-Premise Software.
  - d. User Licenses. User licenses cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Software or Cloud Services.
  - e. Subsidiaries. Customer may permit its Subsidiaries to use the Software and Cloud Services in accordance with the terms of this Agreement but only while the entity qualifies as Customer's Subsidiary, and provided that (i) each Subsidiary agrees to be bound by the terms of this Agreement, and (ii) Customer is responsible and fully liable for each Subsidiary's compliance with and breach of this Agreement.
  - f. Restrictions. Customer may not access or use the Software or Cloud Services if Customer is a direct competitor of McAfee, or for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without McAfee's express written permission. Customer will not: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Software or Cloud Services available to any third party; (ii) use systems as an Open Proxy or Open Relay; (iii) modify, decompile, reverse engineer, or copy the Software or Cloud Services, or any of its components; (iv) use the Software or Cloud Services to conduct fraudulent activities; (v) attempt to gain unauthorized access to the Software or Cloud Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to McAfee, its provision of the Software or Cloud Services, or others; (vi) impersonate or misrepresent an affiliation with a person or entity; (vii) use the Software or Cloud Services to initiate or propagate Malware; (viii) use the Software or Cloud Services for any purpose that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement; (each of (i) to (viii), a "Prohibited Use").
  - g. Reserved Rights. The Cloud Services and Software, including, without limitation, their object code and source code, whether or not provided to Customer, are strictly confidential to McAfee. McAfee (or its licensors) owns exclusively and reserves all rights to the Cloud Services and Software, and Customer may not exercise any, right, title, and interest in and to the Cloud Services or Software, including, without limitation, all Intellectual Property Rights in and to the Cloud Services or Software, except to the extent of the limited rights and licenses granted to Customer in this Agreement. This Agreement is not an agreement of sale, and no title, Intellectual Property Rights, or ownership rights to the Cloud Services or Software are transferred to Customer pursuant to this Agreement. Customer acknowledges and agrees that the Cloud Services and Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Cloud Services and Software, all future Updates and Upgrades, and all other improvements, revisions, corrections, bug-fixes,

- hot-fixes, patches, modifications, enhancements, releases, DATs, signature sets, upgrades, and policy, database, and other updates in, of, or to the Cloud Services or Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of McAfee.
- h. Right to Use Customer Data. Customer hereby grants McAfee a limited, non-exclusive, royalty-free, license to access and use the Customer Data as necessary for (i) McAfee to provide the Software, Cloud Services and technical support to Customer during the applicable License Period; (ii) to maintain or improve the Cloud Services and Software and other security related products, including to develop Updates and Upgrades; (iii) for internal research for threat protection solutions, such as improved spam protection (unless Customer opts out of such uses through the options available in the console); (iv) for administration of the Agreement, and (v) for purposes set forth in McAfee's Privacy policies available at <http://www.mcafee.com/common/privacy/english/>. In addition, Customer acknowledges and agrees to the use or sharing by McAfee of aggregated, anonymized or pseudonomized Customer Data (such that it no longer identifies Customer or any individual) as a part of a larger set of statistics (for example, statistics describing the enterprise, amount of traffic, success rates, and the like) and that such data does not constitute Confidential Information.
  - i. Open Source Software. The Software may include components (including, without limitation, programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model ("FOSS Code"). FOSS Code components included with the Software are redistributed by McAfee to Customer under the terms of the applicable FOSS Code license for such component, and Customer's receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails Customer's rights or obligations defined by the FOSS Code license applicable to the FOSS Code component. Copies of the FOSS Code licenses for FOSS Code components included with Software are included with or referenced in the Software or its Documentation.
3. **BETA RELEASES AND EVALUATIONS**. If Customer has signed up for an evaluation of Software or Cloud Services ("Evaluation Product"), or is given access to Software or Cloud Services identified as not generally available for commercial use, such as "Beta" or "Pre-Release" ("Beta Product"), then the provisions of this Section shall apply and shall control over any other conflicting terms of this Agreement. Customer's use of an Evaluation Product is limited to thirty (30) days unless otherwise agreed to in writing by McAfee, during which time Customer may access and use the Evaluation Product solely for Customer's internal evaluation to decide whether to purchase the right to use the Evaluation Product. McAfee reserves the right to materially change or discontinue Beta Products at any time and without notice to Customer. Access or use of a Beta Product is restricted to Customer's internal performance evaluation of the Beta Product. McAfee is not obligated to finally release any version of the Beta Product. Customer will report to McAfee unusual, unplanned, or out of the ordinary events observed in a Beta Product. McAfee has no obligation to provide any Support for Evaluation Products or Beta Products. Customer acknowledges that the Evaluation Products and Beta Products may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. CONSEQUENTLY, EVALUATION PRODUCTS AND BETA PRODUCTS ARE PROVIDED TO CUSTOMER SOLELY ON AN "AS IS" BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE EVALUATION PRODUCTS AND BETA PRODUCTS. CUSTOMER ASSUMES ALL RISK OF USE OF EVALUATION PRODUCTS AND BETA PRODUCTS. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE

LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS SHALL BE LIMITED TO THE SUM OF FIFTY (50) UNITED STATES DOLLARS (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.

**4. CUSTOMER OBLIGATIONS**

- a. Customer is responsible for all activity occurring under Customer's Software, Cloud Services and Support accounts. Customer will provide McAfee with all information and assistance required to supply the Software or Cloud Services or enable Customer's use of the same. Customer will immediately notify McAfee of any: (i) unauthorized account use or other suspected security breach; (ii) unauthorized use, copying or distribution of Software, Documentation or Customer Data; and (iii) unusual performance of the Software or Cloud Services observed by Customer.
  - b. Customer must obtain all necessary rights and permissions from Users. Customer represents and warrants that: (i) Customer has the legal rights and applicable consents to provide Customer Data to McAfee, (ii) Customer will comply with all applicable laws for processing and transferring Customer Data to McAfee and (iii) Customer retains adequate back-ups of Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Cloud Services rely on Customer Data as supplied by Customer, and McAfee is not liable for the content of Customer Data. McAfee does not assume any duty or obligation to correct or modify Customer Data.
  - c. As needed, Customer will provide McAfee contact information for Customer's system administrator, who is authorized to provide the information required to configure and manage the Cloud Services ("System Administrator"). Depending on the Cloud Services purchased, McAfee may provide Customer with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
  - d. Customer agrees to provide current and complete account Users' information as necessary for McAfee to manage Customer's account. Customer agrees to accept McAfee emails relevant to Customer's receipt of the Cloud Services at the e-mail address specified by its System Administrator.
  - e. Customer agrees that McAfee may rely on all information provided to McAfee by the Customer. McAfee may provide all notices, statements, and other communications arising under this Agreement (other than legal notices) to Customer through either e-mail, posting on the Cloud Services or other electronic transmission.
- 5. TECHNICAL SUPPORT SERVICE.** The then-current McAfee Technical Support and Maintenance Terms apply to the Software and Cloud Services. The McAfee Technical Support and Maintenance Terms are incorporated by reference and can be found at: [http://www.mcafee.com/us/support/support\\_terms\\_n\\_conditions.html](http://www.mcafee.com/us/support/support_terms_n_conditions.html).
- 6. TERM; TERMINATION; LICENSE PERIODS.**
- a. Term. The term of this Agreement will continue until the termination of all License Periods, unless terminated sooner in accordance with this Agreement.
  - b. Termination.
    1. Either Party may terminate this Agreement for cause immediately upon notice to the other Party if the other Party commits a material breach of this Agreement and fails to cure such breach within five (5) business days after receipt of the written notice specifying the breach.
    2. This Agreement will terminate automatically and without notice of (a) Customer becomes the subject of any involuntary Bankruptcy Proceeding which is not dismissed or otherwise terminated within 30 days of commencement, or

- (b) Customer voluntarily commences or accedes to any Bankruptcy Proceeding. For purposes of this Section, "Bankruptcy Proceeding" means any voluntary or involuntary insolvency, cession, liquidation, winding up, bankruptcy, reorganization, rearrangement, receivership, assignment for the benefit of creditors, or similar proceedings under applicable law, including without limitation the U.S. Bankruptcy Code or any foreign equivalent.
3. If Customer is subject to a Change of Control, McAfee may, at any time in its sole discretion, terminate this Agreement as of the effective date of the Change of Control, by giving Customer notice of termination, unless McAfee consents in writing to the continuation of this Agreement after the Change of Control. Customer must notify McAfee of the pending Change of Control at least 30-days prior to the effective date of the Change of Control. The parties must continue to perform their obligations under this Agreement during the period between the time McAfee has notice of the Change of Control and the termination date of this Agreement. A "Change of Control" of Customer is deemed to occur if any person or entity, other than the persons and entities having Control of Customer as of the date Customer enters into this Agreement with McAfee, acquires Control of Customer.
  4. Upon termination of this Agreement, all License Periods will terminate. After the termination of the License Period for a particular Service, Customer agrees that McAfee has no obligation to retain Customer Data for that Service, which may be irretrievably deleted as part of McAfee's record and information management and in accordance with applicable laws. To the extent any Customer Data is stored by the Service, Customer is solely responsible for retrieving that Customer Data.
- c. License Periods. The initial License Period for each of the Cloud Services (including any Cloud Client Software used to access the Cloud Services) or for any other Software is specified in the Grant Letter (the "Initial License Period"). After the Initial License Period, the license to the Cloud Services (including Cloud Client Software used to access the Cloud Services) or any other Software will automatically renew for successive terms of equal length as the Initial License Period (each a "Renewal Period") unless (a) either Customer or Channel Partner provides McAfee notice of non-renewal at least five (5) days prior to the end of the then current Initial License Period or Renewal Period or (b) McAfee provides Customer notice of non-renewal (1) for Annual Customers, at least two (2) months before the end of the then-current Initial License Period or Renewal Period; or (2) for Monthly Customers, at least ten (10) days before the end of the then current term.
  - d. End-of Life. McAfee's provision of the Cloud Services and Software is subject to McAfee's End-of-Life Policy available at <http://www.mcafee.com/us/resources/misc/support-policy-product-support-eol.pdf>. Upon the End of Life date of the Cloud Services (as described in the End-of-Life Policy), the License Period for the Cloud Services (including Cloud Client Software used to access the Cloud Services) will terminate.
  - e. Suspension of Service. McAfee may suspend the Cloud Services: (a) if McAfee deems it necessary to prevent or terminate any actual or suspected Prohibited Use; or (b) upon notice to Customer if: (i) Customer commits a material breach of this Agreement; (ii) if McAfee receives notice from Channel Partner that Customer is in material breach of the Agreement, (iii) McAfee determines that the volume of data being transmitted or

processed through the Cloud Services under Customer's account is significantly greater than the average use or may cause degradation of the Cloud Services for Customer or other customers; or (iv) in the event of a threat to the security and integrity of the hosted environment and/or Customer Data. Suspension of Cloud Services shall be without prejudice to any rights or liabilities accruing prior to or during the suspension, including Customer's obligation to pay fees.

- f. Survival. Sections 1, 6-11, 13-18 and 20-29 will survive the termination (including by expiration) of this Agreement.

## 7. PAYMENTS; TAXES; AUDIT.

- a. Payments. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case payment obligations shall flow exclusively between Channel Partner and Customer, Customer will pay McAfee the fees set forth in the Grant Letter within thirty (30) days of the invoice date. Late payments are subject to interest of 1.5% per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If Customer believes an invoice is incorrect, Customer must contact McAfee in writing within thirty (30) days of the date of invoice to be eligible to receive an adjustment or credit. The fees for a Renewal Period will be equal to the fee in effect during the Initial License Period unless McAfee has given Customer at least thirty (30) days prior written notice of a fee increase.
- b. Transaction Taxes. Customer will pay all applicable transaction taxes, including, but not limited to, 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 Customer under this Agreement ("Transaction Taxes"). Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Transaction Taxes shall be exclusively the responsibility of Channel Partner and Customer, McAfee will separately state on its invoices the Transaction Taxes that McAfee is required to collect from Customer under applicable law. Customer will provide proof of any exemption from Transaction Taxes to McAfee at least 15 business days prior to the due date for paying an invoice. If McAfee does not collect the required Transaction Taxes from Customer but is later required to remit such Transaction Taxes to any taxing authority, Customer will promptly reimburse McAfee for such 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.
- c. Withholding Taxes. All payments due from Customer will be made free and clear without deduction for any present and future taxes imposed by any taxing authority. Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case obligations regarding Withholding Taxes (as defined below) shall be exclusively the responsibility of Channel Partner and Customer, if Customer is required by applicable law to deduct or withhold income taxes from amounts payable to McAfee under this Agreement ("Withholding Taxes"), Customer will remit, and provide McAfee with evidence that Customer has remitted, the Withholding Taxes to the appropriate taxing authority and pay to McAfee the remaining net amount. Customer will provide written notice to McAfee of its intent to withhold (including details of the amounts and legal basis for the Withholding Taxes) at least 15 business days prior to the due date for any payments under this Agreement and will cooperate with McAfee to reduce any Withholding Taxes. If McAfee provides Customer with valid and official documentation



issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Customer will apply the lower rate.

- d. Income Taxes. Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- e. Audit. McAfee has the right, at its expense, to audit Customer's compliance with the terms of this Agreement, and Customer will provide all records and information reasonably necessary for McAfee to successfully perform such audit. If any audit reveals that Customer owes fees to McAfee, or the Channel Partner, Customer will promptly remit such underpaid amounts, including any interest owed for overdue payments. Customer consents to McAfee's disclosure of such audit results to the Channel Partner.

8. **CONFIDENTIALITY**. In connection with this Agreement, each party may receive or have access to confidential information and materials of the other party. As used in this Agreement, "Confidential Information" means information that (a) 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 15-days of disclosure; or (b) the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure; but Confidential Information does not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure, or (iv) is independently developed by the receiving party without the use of the other party's Confidential Information. Customer acknowledges that McAfee's pricing, Cloud Services access codes and nonpublic information regarding the Licensed Products and McAfee's Intellectual Property Rights are McAfee's Confidential Information. As between the parties, the disclosing party owns the Confidential Information it discloses to the receiving party. Each party will take reasonable precautions (at least as great as the precautions it takes to protect its own confidential information) to prevent unauthorized use or disclosure of the other party's Confidential Information in its possession. Neither party will (a) disclose any Confidential Information of the other party to any third party during the term of this Agreement and for as long thereafter as the Confidential Information remains competitively sensitive, but not in any event for less than 7 years following the termination of this Agreement, or (b) use any Confidential Information of the other party except in the performance of its obligations or exercise of its rights under this Agreement; but a party may disclose Confidential Information of the other party (i) to its employees, contractors or agents, on a need-to-know basis, under an obligation of confidentiality no less stringent than that set forth in this Section, and (ii) as required by law, provided that the receiving party notifies the disclosing party as soon as feasible and cooperates with the disclosing party's efforts to limit or avoid the disclosure.
9. **DATA PROTECTION**. The Software, Cloud Services or Support may employ applications and tools to collect Customer Data that includes one or more data elements that can be used to identify a natural person ("Personal Data"). For the purpose of the Agreement, with respect to Personal Data, Customer and McAfee acknowledge that McAfee is a Data Processor and Customer is a Data Controller.
- a. In accordance with the instructions provided by Customer through one or more orders under this Agreement, McAfee will collect, process, copy, backup, store, transfer and use (collectively "Process") Personal Data. Processing may take place in, from and to the United States, Europe, or other countries or jurisdictions, potentially outside of the Customer or User's own.

- b. For Personal Data originating from Customer (for the purposes of the Standard Contractual Clauses the "Data Exporter") established in the European Economic Area and Switzerland (an "EU Transfer") the Standard Contractual Clauses will apply to the Processing by McAfee outside of the European Economic Area (who, for the purposes of the Standard Contractual Clauses shall be deemed the "Data Importer"). "Standard Contractual Clauses" mean the standard contractual clauses for the transfer of Personal Data from a Data Controller in the European Economic Area to Processors established in third countries under the EU Data Protection Directive 95/46/EC (the "Directive") or any legislation replacing the Directive, (or any alternative or successor Decision that approves new standard contractual clauses for transfers to Data Processors in third countries). The Standard Contractual Clauses are available on the European Commission's website at the following link: [Standard Contractual Clauses](#). The Standard Contractual Clauses will cease to apply if McAfee is certified under the EU/US Privacy Shield or if McAfee adopts Processor Binding Corporate Rules or an alternative recognized compliance standard for the lawful transfer of Personal Data (as defined in the Directive) outside the European Economic Area upon notice hereof by McAfee to Customer. If there is any conflict between the Standard Contractual Clauses and this Agreement, the Standard Contractual Clauses shall prevail. Customer is solely responsible for securing any privacy-related rights and permissions from individual persons and third parties as required by regulation, statute, or other law, or by Customer's internal policies or guidelines, in order to use the Licensed Products or disclose to McAfee any personally identifiable information.
  - c. Where required in support of the permitted uses under this Agreement, Personal Data may be shared with third parties, including vendors, suppliers and partners ("Sub-Processors"). McAfee will restrict Sub-Processors access to Personal Data to the extent needed for performance and will impose written contractual obligations that are no less protective of the Personal Data than those obligations set forth in this Agreement.
  - d. McAfee may use cookies to store user session information, access codes and application settings to ease site navigation processes.
  - e. McAfee will implement technical, organizational and administrative security measures in order to protect the Personal Data it Processes from unauthorized access and misuse while under McAfee's custody or control. McAfee restricts its personnel from Processing Personal Data without authorization and will impose appropriate obligations upon its personnel, regarding confidentiality, data protection and data security. McAfee will not disclose Personal Data to any third party (including any government agency, court, or law enforcement agency) except with written consent from Customer or as necessary to comply with the law or valid legal process (e.g., subpoena, warrant, or court order). If a third party makes a request to McAfee for access to or correction of Personal Data, McAfee will refuse such request and instruct the third party to request that Personal Data directly from Customer and provide the third party with Customer's contact information. If compelled to disclose Personal Data to a law enforcement agency or a third party, McAfee will endeavour to give Customer reasonable notice of the access request prior to granting such access, to allow Customer to seek a protective order or other appropriate remedy. If such notice is legally prohibited, McAfee shall take reasonable measures to protect the Personal Data from undue disclosure, as if it were McAfee's own Confidential Information being requested. McAfee will notify Customer without undue delay if it becomes aware of unauthorized access or misuse of the Personal Data it Processes under this Agreement and will take reasonable steps to mitigate the effects and to minimize any resulting damage.
10. **INTELLECTUAL PROPERTY.** The Licensed Products are the sole and exclusive property of McAfee or its licensors, who retain sole ownership of all right, title and interest in Licensed

Products, as well as any derivative works thereof. These ownership rights include all Intellectual Property Rights. Customer agrees, on behalf of itself and its Subsidiaries, that Customer and its Subsidiaries will take no action inconsistent with McAfee's Intellectual Property Rights. Customer agrees that McAfee has the unrestricted right to use suggestions and feedback provided by Customer regarding products and services of McAfee and its affiliates, without notice to, payment to or consent from Customer, and that Customer will treat such suggestions and feedback as the Confidential Information of McAfee, and not Customer. Customer retains all right, title and interest in and to Customer Data.

**11. LIMITED WARRANTY, REMEDIES AND DISCLAIMERS.**

- a. LIMITED WARRANTY. McAfee warrants that the Cloud Services will perform substantially in accordance with its Documentation. This warranty is personal to Customer and may not be assigned, transferred or passed-through to any third party. THIS WARRANTY WILL NOT APPLY IF (i) THE CLOUD SERVICES OR SOFTWARE IS NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR ITS DOCUMENTATION; (ii) THE SOFTWARE HAS BEEN MODIFIED BY ANY PERSON OR ENTITY OTHER THAN MCAFEE; OR (iii) A MALFUNCTION IN THE CLOUD SERVICES OR SOFTWARE HAS BEEN CAUSED BY ANY SYSTEMS, EQUIPMENT OR TECHNOLOGY NOT SUPPLIED BY MCAFEE.
- b. LIMITATION OF REMEDY. The sole and exclusive remedy, and McAfee's entire obligation and liability, for McAfee's breach of warranty under this Agreement is for McAfee to repair or replace the Cloud Services to conform with its Documentation. If McAfee is unable to do so, McAfee may, in its own discretion, allow Customer to terminate the Agreement immediately upon notice to McAfee. In such event, if Customer paid fees directly to McAfee and not to a Channel Partner, McAfee will provide to Customer a pro-rata refund of the fees paid under this Agreement for the remainder of the then-current monthly or annual term.
- c. EXCLUSIONS; DISCLAIMERS.
  1. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 11(a) (Limited Warranty), ALL LICENSED PRODUCTS, SUPPORT, AND OTHER ITEMS ARE PROVIDED TO CUSTOMER "AS IS" AND "WITH ALL FAULTS" AND MCAFEE MAKES NO REPRESENTATIONS OR WARRANTIES, AND DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION.
  2. WITHOUT LIMITATION, MCAFEE DOES NOT REPRESENT OR WARRANT ANY OF THE FOLLOWING: (i) THAT ANY LICENSED PRODUCT, DEVICE, NETWORK, SUPPORT, OR SYSTEM WILL OPERATE UNINTERRUPTED OR BE FAILSAFE OR ERROR-FREE; (ii) THAT ANY LICENSED PRODUCT, DEVICE, ADVICE, REPORT, OR DATA, WILL BE FREE FROM ERRORS OR COMPLY WITH ANY PARTICULAR LAW; (iii) ANY BUSINESS RESULTS CUSTOMER MAY ACHIEVE; (iv) THAT ANY OR ALL SYSTEM VULNERABILITIES OR WEAKNESSES WILL BE DISCOVERED; OR (v) COMPLETE PROTECTION AGAINST ANY SECURITY THREATS OR OTHER POSSIBLE RISKS. CUSTOMER WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION 11(c) (Exclusions; Disclaimers).
  3. THE LICENSED PRODUCTS MAY FAIL AND ARE NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH RISK SYSTEMS.

MCAFFEE HAS NO RESPONSIBILITY FOR, AND CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS MCAFFEE, ITS AFFILIATES AND REPRESENTATIVES FROM, ALL CLAIMS, SUITS, DEMANDS, AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING, ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE, OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH CUSTOMER'S USE OF THE PRODUCTS ON OR IN A HIGH RISK SYSTEM, INCLUDING, WITHOUT LIMITATION, THOSE THAT (a) COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, OR (b) ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH RISK SYSTEM DEPENDS OR DEPENDS ON THE FUNCTIONING OF THE PRODUCTS OR THAT THE FAILURE OF ANY PRODUCT CAUSED A HIGH RISK SYSTEM TO FAIL. As used herein, "High Risk Systems" means any device or system that requires extra safety functionalities such as fail-safe or fault-tolerant performance features to maintain a safe state where it is reasonably foreseeable that failure of the device or system could lead directly to death, personal injury, or catastrophic property damage. A device or system with a fail-safe feature in the event of failure may revert to a safe condition rather than break down, may include a secondary system that comes into operation to prevent a malfunction, or may operate as a backup in the event of a malfunction. A device or system with a fault-tolerant feature in the event of failure may continue its intended operation, possibly at a reduced level, rather than failing completely. Without limitation, High Risk Systems may be required in critical infrastructure; industrial plants; manufacturing facilities; direct life support devices; aircraft, trains boats or vehicle navigation or communication systems; air traffic control; weapons systems; nuclear facilities; power plants; medical systems and facilities; and transportation facilities.

4. Third Parties. THE SOFTWARE AND CLOUD SERVICES MAY CONTAIN INDEPENDENT THIRD PARTY PRODUCTS AND RELY UPON THEM TO PERFORM CERTAIN FUNCTIONALITY, INCLUDING MALWARE DEFINITIONS OR URL FILTERS AND ALGORITHMS. MCAFFEE MAKES NO WARRANTY AS TO THE ACCURACY OF ANY SUCH THIRD PARTY INFORMATION.
  5. Internet Delays. CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAY AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MCAFFEE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS.
  6. Security. No data transmission over the Internet can be guaranteed to be secure. McAfee is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside McAfee's control. Customer is responsible for maintaining the security of its networks, servers, applications and access codes.
12. **PARTNER ACCESS**. Customer acknowledges and agrees that if the Cloud Services are purchased through a Channel Partner, the Channel Partner may have access to: (1) Customer Data; and (2) system administration of Customer's account, including the ability to configure the account and applicable policies.
13. **LIMITATIONS OF LIABILITY**.

- a. NO CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES WILL MCAFEE OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND OR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, COMPUTER OR SYSTEM FAILURE OR MALFUNCTION, COSTS OF OBTAINING SUBSTITUTE SOFTWARE OR 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. FURTHER, UNDER NO CIRCUMSTANCES WILL MCAFEE OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATING TO ALLEGATIONS OR CLAIMS THAT THE CLOUD SERVICES OR SOFTWARE WERE NOT FAILSAFE, DID NOT OPERATE INTERRUPTION- OR ERROR-FREE, OR DID NOT PROTECT AGAINST ALL SECURITY BREACHES OR ALL POSSIBLE SECURITY THREATS, MALFUNCTIONS, MALICIOUS CODE OR OTHER VULNERABILITIES OR ERRORS IN ANY CLOUD SERVICES OR SOFTWARE CAUSED BY VIRUS, INFECTION, WORM OR SIMILAR MALICIOUS CODE, IN ALL CASES REGARDLESS OF LEGAL THEORY AND WHETHER OR NOT FORESEEABLE, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED BY THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. THESE LIMITATIONS DO NOT APPLY TO MCAFEE'S INDEMNIFICATION OBLIGATIONS; TO MCAFEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR TO ANY LIMITATION TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
  - b. DOLLAR CAP. REGARDLESS OF WHETHER A CLAIM FOR DAMAGES IS BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN NO EVENT WILL THE AGGREGATE TOTAL LIABILITY OF MCAFEE OR ITS LICENSORS UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT EXCEED (a) FOR MONTHLY CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (b) FOR ANNUAL CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, LESS THE AGGREGATE OF ALL AMOUNTS PAID BY SUCH LIABLE PARTY UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER ON ACCOUNT OF PREVIOUS EVENTS OF LIABILITY. THESE LIMITATIONS DO NOT APPLY TO MCAFEE'S INDEMNIFICATION OBLIGATIONS; TO MCAFEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR TO ANY LIMITATION TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
  - c. RISK ALLOCATION. The exclusions and limitations of liability specifically provided by this Agreement allocate between the parties the risks under this Agreement, some of which may be unknown or undeterminable. The exclusions and limitations were a material inducement for the parties to enter into this Agreement, and the parties have relied upon them in determining whether to enter into this Agreement. Each party expressly agrees to these exclusions and limitations and acknowledges that without them, the fees charged for the Cloud Services or Software would be higher or would not be offered under this Agreement.
  - d. ACTIONS. Except for claims related to non-payment, or to Customer's breaches of Section 2 (Right of Use and Restrictions), Section 8 (Confidentiality) or Section 21 (Compliance), neither party may bring any legal action for any relief arising out of any matter relating to this Agreement more than 2 years after the party knew or should have known of the event giving rise to the claim or action.
14. **CUSTOMER INDEMNITY**. Customer will indemnify and, at McAfee's election, defend McAfee against all claims, liabilities, damages, fines, penalties, costs and expenses (including

reasonable attorneys' fees) arising out of or relating to any: (i) Customer breach of this Agreement; (ii) Customer Data, including Customer's failure to obtain all necessary consents related to Customer Data; (iii) taxes arising from the Software and Cloud Services whether now in effect or imposed in the future (excluding taxes based on McAfee's income); (iv) claims by third parties arising from Customer's use of the Software or Cloud Services (excluding claims for which McAfee is obligated to indemnify Customer under Section 15 (McAfee Indemnity)); and (v) any reasonable costs and attorneys' fees required for McAfee to respond to a subpoena, court order or other official government inquiry regarding Customer Data or Customer's use of the Software or Cloud Services.

**15. MCAFEE INDEMNITY.**

- a. McAfee will indemnify and, at its election, defend Customer against claims asserted against Customer in any suit or proceeding for direct patent or copyright infringement, or for McAfee's trade secret misappropriation, asserted against the Cloud Services or Software, as and in the form provided by McAfee under this Agreement alone and not in combination with anything.
- b. Notwithstanding anything else, McAfee has no obligation under this Section 15 (McAfee Indemnity) with respect to the following: (a) any claim (such as a counterclaim) that is made in response to a suit or proceeding first filed by Customer, including, without limitation, alleging patent infringement; or (b) any claim to the extent actually or allegedly based on any of the following: (i) elements or features in, or operation of, software, services, or other material not supplied by McAfee, (ii) McAfee's inclusion or use of software, services, technology, or material provided by Customer, (iii) McAfee's compliance with Customer's designs, specifications, or instructions, (iv) modification of any Software by anyone other than McAfee, (v) use of any Cloud Services or Software where that use is contrary to the specifications or instructions for use, or the terms of this Agreement, (vi) combination of any Cloud Services or Software with anything, (vii) the Cloud Services or Software implements or complies with, in whole or in part, as provided or when used, a Standard, (viii) Customer willfully infringed, (ix) McAfee, Customer, or the Cloud Services or Software indirectly infringes, including by inducing or contributing to another's infringement, or (x) activity that occurs after Customer is notified of the claim and is provided with modifications or other action that would avoid the claimed infringement.
- c. McAfee's indemnity obligations are conditioned on Customer's prompt written notice to McAfee of a claim and on Customer's tender to McAfee of the right to solely control and conduct the defense and any settlement of the claim. Customer must fully and timely cooperate with McAfee and provide McAfee with all reasonably requested authority, information, and assistance. McAfee is not responsible for any costs, expenses, or compromise incurred or made by Customer without McAfee's prior written consent.
- d. At its option, McAfee will solely control and conduct the defense and any settlement of indemnified claims. McAfee, in its sole discretion and at its own expense, may (a) procure for Customer the right to continue using the Cloud Services or Software; (b) replace any affected Cloud Services or Software with non-infringing Cloud Services or Software; (c) modify any affected Cloud Services or Software so that it becomes non-infringing; or (d) upon McAfee's receipt of Customer's written representation and promise that it has removed all instances of the affected Software and will not use the affected Software and Cloud Services, credit or refund to Customer a pro-rata portion

of the amounts already paid by Customer for the affected Cloud Services for the remainder of the applicable License Period.

- e. The indemnity provided in this Section 15 (McAfee Indemnity) states McAfee's entire obligation and liability and Customer's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Cloud Services or Software. This indemnity is personal to Customer and may not be assigned, transferred, or passed through to any third party.
16. **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. No waiver of any provision of this Agreement will be valid unless in writing, specifying the provision to be waived, and signed by the party agreeing to the waiver.
17. **GOVERNING LAW; DISPUTE RESOLUTION.** This Agreement and any dispute arising out of or relating to it will be governed by the laws of the United States and Delaware, without regard to conflict of laws principles. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods (1980). Any dispute arising out of or relating to this Agreement will be resolved as follows: either party will deliver notice of the dispute, including a detailed description of the dispute, together with relevant supporting documents. Senior management from each party will then attempt to resolve the dispute. If the parties do not resolve the dispute within 30 days of the dispute notice, either party may deliver notice of a demand for mediation. The parties will then try to resolve the dispute with a mediator. If the parties do not resolve the dispute within 60 days after the mediation demand, either party may begin litigation. The dispute resolution process in this Section will not apply to claims for misappropriation of trade secrets or breach of confidentiality obligations if the requested relief includes injunctive or other non-monetary relief. The state and federal courts sitting in Wilmington, Delaware will have exclusive jurisdiction over any dispute arising out of or relating to this MSA. The Parties consent to personal jurisdiction and venue in those courts. Claims for misappropriation of trade secrets and breach of confidentiality obligations may also be brought in any court that has jurisdiction over the parties if the relief sought includes injunctive or other non-monetary relief. A party that obtains a judgment against the other party in the courts identified in this Section may enforce that judgment in any court that has jurisdiction over the parties.
18. **NOTICES.** All legal notices to McAfee under this Agreement must be addressed to "Attention: Legal Department" 5000 Headquarters Dr., Plano, TX 75024. All legal notices to Customer may be sent using the contact information on file with McAfee, as specified in the registration information provided by Customer when purchasing or registering for the Cloud Services. Notices shall be deemed effective upon receipt. It is Customer's obligation to ensure McAfee has the most current contact information.
19. **MODIFICATION TO TERMS.** McAfee reserves the right to modify the terms and conditions of this Agreement at any time, effective upon the posting of an updated version at <http://www.mcafee.com/us/about/legal/saas-terms.aspx>. Customer is responsible for regularly reviewing this Agreement. Continued use of the Software or Cloud Services after any such change shall constitute Customer's consent to the changes.
20. **ASSIGNMENT.** Customer may not assign this Agreement, whether by contract, operation of law or otherwise, without the prior written permission of McAfee. Any attempt by Customer to assign this Agreement, including any rights, duties, or obligations under this Agreement, without McAfee's written consent will be a material breach of this Agreement and will be null and void. McAfee may assign this Agreement in its sole discretion. Subject to the foregoing

restriction on Company's assignment, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

21. **COMPLIANCE.** Each Party will comply with all applicable laws in the conduct of its business with respect to its rights and obligations under this Agreement, including, without limitation, applicable privacy and export control laws and regulations, the U.S. Foreign Corrupt Practices Act, and other applicable anti-corruption laws. Customer may not, directly or indirectly, export or transmit any Licensed Products or technical data (or any part thereof) or any process or service that is produced by any Licensed Products, to any country to which such export or transmission is restricted by applicable law, without the authorization, if required, of the Bureau of Industry and Security of the U.S. Department of Commerce or any such other applicable governmental entity as may have jurisdiction over such export or transmission. Customer will not use the Licensed Products for the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, demilitarization, destruction, processing, use, configuration, adaptation or modification of any defense, military, intelligence, nuclear, or space article or activity, or missile technology including, without limitation, those items enumerated on (a) Wassenaar Arrangement's Sensitive List, Very Sensitive List and/or Munitions List; (b) the International Traffic in Arms Regulations ("ITAR") United States Munitions List ("USML," 22 C.F.R. pt. 121); or (c) the Common Military List of the European Union, unless authorized by the U.S. Government by regulation or specific license. Customer will not discuss, disclose, or release to McAfee any Confidential Information directly related to any defense, military, intelligence, nuclear, or space article or activity. Customer will not transfer, resell, divert, export or re-export any Licensed Products or any related technical information or materials (i) into any U.S. embargoed countries, or (ii) to any person or entity listed on a denial order published by the U.S. government or any other applicable government. Customer represents and warrants that neither the Bureau of Industry and Security nor any other agency or government has suspended, revoked or denied Customer's export privileges and that Customer will not provide any Licensed Products to any person or entity whose export privileges have been suspended, revoked, or denied. McAfee products may require authorization from the U.S. and other applicable authorities including, without limitation, the European Union, prior to export, import or use restrictions in other countries. Additional information regarding compliance with export control laws can be found at: <http://www.mcafee.com/us/about/export-compliance.aspx>.
22. **NOTICE TO U.S. GOVERNMENT END USERS:** The Software and Cloud Services are deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Cloud Services by the United States Government shall be governed solely by the terms of this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
23. **FORCE MAJEURE.** McAfee will not be liable for any delays, failures to perform, damages, losses, destruction, or malfunction, or any consequence thereof, caused by forces of nature or any other cause beyond its reasonable control.
24. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. However, this Agreement, including without limitation its termination, has no effect on any signed non-disclosure agreements between the parties, which remain in full force and effect as separate agreements according to their terms. The express provisions of this Agreement control over any course of performance, course of dealing, or usage of the trade inconsistent with any of the provisions of this Agreement. The



provisions of this Agreement will prevail notwithstanding any different, conflicting, or additional provisions that may appear on any purchase order, acknowledgment, invoice, or other writing issued by Customer in connection with this Agreement.

25. **SEVERABILITY.** The Parties intend that if a court holds that any provision or part of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision or part 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 or part from this Agreement. Any change to or deletion of a provision or part of this Agreement under this Section will not affect the validity or enforceability of the remainder of this Agreement, which will continue in full force and effect.
26. **REMEDIES.** All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.
27. **RELATIONSHIP.** The relationship of McAfee and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement (a) gives either party the power to direct and control the day-to-day activities of the other party; (b) constitutes the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (c) allows either party to create or assume any obligation on behalf of the other party. The relationship contemplated by this Agreement is non-exclusive and does not prohibit either party from entering into any arrangements with any third parties. Each party understands and acknowledges that (a) the other party may develop or acquire technology, software, hardware, and data for its own products and services, and that existing or planned products and services developed or acquired by a party, may contain ideas or concepts similar or identical to those in the Confidential Information or Licensed Products under this Agreement; and (b) entering into this Agreement does not preclude a party from developing or acquiring any products without obligation to the other party.
28. **SUPPLEMENTAL TERMS; GRANT LETTER.** In the event of a conflict between a Grant Letter, the Supplemental Terms and/or the Subscription Agreement, the Supplemental Terms shall control over the Grant Letter and Subscription Agreement, but solely as to the relevant Service, and the Subscription Agreement shall control over the Grant Letter.
29. **THIRD PARTIES.** All warranty disclaimers and limitations of remedies and damages in this Agreement that are applicable to McAfee (including, without limitation, the warranty disclaimers and limitations of liability) also extend to and apply in respect of McAfee's affiliates, third-party suppliers and licensors as third party beneficiaries. Except as provided in this Section 29 (Third Parties), the parties do not intend, nor may any clause of this Agreement be interpreted, to create under this Agreement any obligations or benefits to, or rights in, any third party from either McAfee or Customer.

## **SUPPLEMENTAL TERMS AND CONDITIONS**

### **A. On-Premise Software License**

The following terms and conditions ("Supplemental Terms") apply to all Customers using On-Premise Software, and are incorporated into the Agreement:

1. **DEFINITIONS.** Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
  - a. "On-Premise Software" means Software that is identified in the applicable Grant Letter and that can be used without any Cloud Services. On-Premise Software may also

include additional features or functionality that can be accessed only with either a current subscription or active support contract to certain Cloud Services, as required by the specific offering.

2. **ON-PREMISE SOFTWARE LICENSE AGREEMENT.** All On-Premise Software is delivered subject to the McAfee End User License Agreement (“EULA”), which is located at: <http://www.mcafee.com/us/about/legal/end-user-license-agreements.aspx>. The terms of this Subscription Agreement and the Supplemental Terms and Conditions are intended to supplement the EULA with respect to On-Premise Software.
3. **CLOUD SERVICES REQUIREMENT.** Certain features or functionality of the On-Premise Software require either a current subscription or an active support contract to access accompanying Cloud Services. Customer’s purchase of a license for On-Premise Software includes only the features and functionality of the On-Premise Software that do not require Cloud Services, and does not entitle Customer to the accompanying features and functionality of the Cloud Services.
4. **UPDATES AND UPGRADES.** After Customer’s purchased support period for On-Premise Software expires, Customer has no further rights to receive any Updates or Upgrades to the On-Premise Software.

## **B. Free Services**

The following terms and conditions (“Supplemental Terms”) apply to all Customers using Free Services, and are incorporated into the Agreement:

1. **DEFINITIONS:** Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
  - a. In addition to the definition set forth in the Subscription Agreement, “Cloud Services” includes free versions of the cloud services that McAfee provides to Customer as specified in one or more Grant Letters, including (i) any features or functionality included in a paid subscription for which McAfee no longer charges or which McAfee offers to Customer at no charge in McAfee’s sole discretion, and (ii) other features or functionality that McAfee makes available to Customer without charge, that is labeled as “Pre-Release,” “Limited Release,” “Beta” or otherwise identified by McAfee as experimental, untested, or not fully functional, and which is not a time-limited trial for Customer’s evaluation purposes (each “Free Services”). “Free Services” also includes any accompanying Software or service that McAfee provides without charge to Customer as a courtesy and in McAfee’s sole discretion.
2. **LICENSE PERIOD.** For Free Services, subject to the terms of the Agreement, the License Period continues for as long as McAfee makes such Free Services available to Customer. McAfee may choose to provide Free Services to Customer prior to, during, or after Customer’s paid subscription to Cloud Services or Software, and any use is subject to the terms of the Agreement then in effect for as long as the Free Services are made available to Customer.
3. **UPDATES / ASSISTANCE / END-OF-LIFE.** Any updates or end-user assistance provided for Free Services are provided at McAfee’s sole discretion and may be discontinued at any time. From time to time, at McAfee’s sole discretion, McAfee may elect to discontinue certain Free Services or particular features of the Free Services (“Free Services Termination”). Free Services are specifically excluded from McAfee’s End-of-Life-Policy. Instead, McAfee will make commercially reasonable efforts to provide thirty (30) days’ prior notice to Customer of a Free Services Termination. McAfee has no obligation to provide any Support to Customers for the Free Services.
4. **COMMUNITY FORUM.** At their convenience, Customers may exchange ideas and technical insight regarding the Free Services on the Cloud Visibility - Community Edition page located at: <https://community.mcafee.com/community/business/data/cloud-visibility>. McAfee does not

endorse, warrant or guarantee any information posted on this site and any use of the information is taken at Customer's sole risk.

5. **DISCLAIMER.** Customer acknowledges that the Free Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss. **CONSEQUENTLY, THE LIMITED WARRANTY IN SECTION 11(a) OF THE SUBSCRIPTION AGREEMENT DOES NOT APPLY TO FREE SERVICES. INSTEAD, FREE SERVICES ARE PROVIDED TO CUSTOMER SOLELY ON AN "AS IS" BASIS, AND MCAFEE DISCLAIMS ALL WARRANTIES AND LIABILITY IN CONNECTION WITH THE FREE SERVICES. CUSTOMER ASSUMES ALL RISK OF USE OF FREE SERVICES.** In addition, Customer acknowledges that McAfee has not promised or guaranteed to Customer that Free Services will be announced or made available to anyone in the future, that McAfee has no express or implied obligation to Customer to announce or introduce Free Services, and that McAfee is not obligated to introduce a product similar to or compatible with Free Services or any updates to any Free Services.
6. **NO SERVICE LEVEL AGREEMENT.** Any Service Level Agreement that, in McAfee's sole discretion, is offered or may be offered for the Cloud Services, does not apply to Free Services. In the event of a covered outage or other issues with the Free Services, Customer and other users of the Free Services may not make a claim under the Service Level Agreement.
7. **LIMITATION OF LIABILITY. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, THE AGGREGATE LIABILITY OF MCAFEE AND LICENSORS IN CONNECTION WITH THE FREE SERVICES SHALL BE LIMITED TO THE SUM OF ONE HUNDRED UNITED STATES DOLLARS (\$100) (OR THE THEN-CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.**
8. **FREE SERVICE DATA STORAGE.** McAfee has no obligation to retain any Customer Data or other Customer information submitted or collected through the Free Services. McAfee may delete any such Customer Data and other Customer information at its own discretion and without prior notice to Customer.