

# McAfee Professional Service Terms

**1. Agreement Structure** These Professional Service Terms ("Terms") apply to such services as provided by McAfee, including, without limitation, such services performed in relation to McAfee branded products, ("Services"). The Services may be stated in a referencing Statement of Work executed by McAfee and Customer ("SOW") or (ii) such other Customer ordering documentation e.g. a purchase order ("Customer Order") appropriate to the relevant Services and as required by McAfee from time to time. For the avoidance of doubt, technical support shall not fall under these Terms.

"Agreement" shall mean the Terms and SOW or Customer Order.

"Customer" shall mean the entity to which the Services are to be provided.

"McAfee" shall mean either (i) the relevant McAfee entity as listed in Exhibit A (Territory Table) and which has primary responsibility for providing the Services in the Territory within which the Customer's entity is located, or (ii) the McAfee entity as stated in the SOW (if any).

"Territory" shall mean the country where the Customer's entity is incorporated.

**2. Price, Payment and Performance.** Service fees are specified in the SOW or the Customer Order. All completion times mentioned in the SOW or the Customer Order are only estimates for Customer's and McAfee's resource scheduling. Customer shall pay all invoices within 30 days of date of invoice without any right to offset, counterclaim, holdback or deduction. In the event of delay in paying, McAfee reserves the right to charge interest on the unpaid amounts calculated as the lesser of (i) 1.5% per month or (ii) the highest rate allowed by relevant law, accrued and compounded from the date due until payment by Customer. The parties agree that McAfee's acknowledgement of receipt of the Customer Order shall constitute McAfee's acceptance of the same. Unless otherwise agreed in writing between the parties, Customer shall schedule Services to be performed within one (1) year of the date of the relevant SOW or Customer Order. McAfee is entitled to delegate some of its contractual obligations to sub-contractors. In the event McAfee uses subcontractors to fulfill its obligations herein, McAfee shall be fully responsible for supervising and directing the sub-contractor's performance. In the event that Customer objects to the use of a particular sub-contractor, Customer must notify McAfee of this objection immediately, and at the latest within 10 business days of having been informed thereof. All communication under the terms of this clause shall be given/addressed to the parties' contacts set out in the SOW.

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

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

**5. Proprietary Rights.** McAfee acknowledges Customer's and its licensors' proprietary rights in preexisting works of authorship provided by Customer to McAfee pursuant to this

Agreement ("**Customer IP**"). Unless the SOW expressly states otherwise, ownership of any patents, copyrights, trademarks, or trade secrets, or any underlying intellectual property rights, including but not limited to inventions, designs, copyrightable works, trademarks, trade secrets, formulas, processes, and ideas for Services performed pursuant to the Agreement shall belong to McAfee ("McAfee Materials"). The Agreement does not describe a work for hire. McAfee shall own all right, title and interest to all intellectual property developed by McAfee during the course of performing the Services. Notwithstanding McAfee's ownership of the items set forth above, subject to the terms of the Agreement and the payment of applicable fees stated in the SOW or Customer Order, McAfee grants to Customer a worldwide, royalty-free, non-exclusive license under McAfee's copyrights, trade secrets and Licensed Patent Claims in any deliverables to use, reproduce, perform, display, distribute, modify, make, sell, offer to sell and import such deliverables; provided that this license shall apply solely to the deliverables in the form originally furnished by McAfee to Customer. For the purpose of this section, "Licensed Patent Claims" means those claims of patents that (a) McAfee owns or has the right to license and (b) are infringed by the deliverables in their original unmodified form as furnished by McAfee to Customer.

No rights or licenses are granted by McAfee under this Agreement, expressly, by implication, inducement, estoppel or otherwise with respect to any proprietary information or patent, copyright, trade secret, mask works or other intellectual property right owned or controlled by McAfee, except as expressly provided in this Agreement. Any further license under such intellectual property rights must be express and in writing signed by an authorized officer of McAfee.

McAfee and its suppliers shall remain the sole owner(s) of all right, title and interest (including copyright, trade secret and patent) in any deliverables, including any documentation, software, modifications or derivative works thereof created by or on behalf of McAfee. Company hereby acknowledges McAfee's and/or its suppliers' ownership of the copyright, trademark, patent, trade secret and any other intellectual property rights in any such materials.

**6. Indemnity.** 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 (i) Services or (ii) McAfee Material, in each case alone and not in combination with anything, and as and in the form provided by McAfee under the SOW or Customer Order. Notwithstanding anything else in the SOW or Customer Order, McAfee has no obligation to indemnify or defend the following claims: (i) those asserted against elements or features in, or operation of, the Services or the McAfee Materials attributable in whole or in part to McAfee's inclusion of software, services or other technology or materials given by Customer to McAfee, or compliance with Customer's designs, specifications or instructions, including inclusion of software, services or other technology or materials supplied by Customer or included at Customer's request; (ii) those asserted against the Services

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or McAfee Materials attributable in whole or in part to the modification of the Services or McAfee Materials by anyone other than McAfee, or against the use of the Services or McAfee Materials, where that use is contrary to its specification or instructions for use; (iii) those asserted against the combination of the Services or McAfee Materials with anything; (iv) those based on an allegation that the Services or McAfee Materials implement or comply with, in whole or in part, as shipped or when used, a technology specification created by a government sponsored, industry sponsored, or contractually formed group or any similar organization dedicated to creating such specifications to be used by others; (v) those including an allegation that McAfee, Customer, or the Services or McAfee Materials indirectly infringe, including by inducing or contributing to another's infringement; (vi) any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by Customer alleging patent infringement; (vii) those including an allegation that the Services or McAfee Materials comply, in whole or in part, as shipped or when used, with any media decoding, encoding, or transcoding technology (such as, for example, through use of an audio or video codec); and (viii) those asserting that Customer willfully infringed. McAfee's obligations under this Section 6 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 will not be responsible for any costs, expenses or compromise incurred or made by Customer without McAfee's prior written consent. At its option, McAfee will solely control and conduct the defense and any settlement of indemnified claims. McAfee may, in its sole discretion and at its own expense: (i) procure for Customer the right to continue using the affected Services or McAfee Materials; (ii) replace the affected Services or McAfee Materials with a non-infringing Services or McAfee Materials; (iii) modify the affected Services or McAfee Materials so that it becomes non-infringing; or (iv) terminate the provision of the Services; and, if the fees are paid prior to the performance of the Services, McAfee shall refund the residual value of the fees paid by Customer for the affected Services, depreciated using a straight line method of depreciation over a three (3) year period from the date of performance of the Services. The foregoing indemnity is personal to Customer. Customer may not assign, transfer or pass through this indemnity to Customer's customers. Customer will notify its customers that they must look solely to Customer for any indemnity for claims of infringement asserted against Services or McAfee Materials purchased from Customer. The foregoing states McAfee's entire obligation and Customer's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Services or the McAfee Materials.

**7. Non-Disclosure.** "Confidential Information" shall mean all information (i) that is designated as "confidential" or by similar words at the time of disclosure and if oral or visual is confirmed as confidential by the disclosing party in writing within fifteen (15) days of disclosure, or (ii) which the receiving party should reasonably have considered to be confidential under the circumstances surrounding disclosure. Each party agrees it will not disclose any such Confidential

Information to any third party for a period of five (5) years following the date of disclosure. Each party will take reasonable precautions to prevent disclosure to any third party, at least as great as the precautions it takes to protect its own confidential information. Confidential Information shall not include any information that (i) was previously known to the receiving party, (ii) is received from a third party without similar restriction, (iii) is or becomes publicly available other than through unauthorized disclosure, (iv) is independently developed by the receiving party without the use of Confidential Information, (v) is in writing approved for release, or (vi) is required to be disclosed pursuant to any court order provided that the receiving party has informed the disclosing party of such request in a timely manner. Either party may disclose Confidential Information to auditors and McAfee to its group companies under an obligation of confidentiality no less stringent. McAfee may share Confidential Information with its sub-contractors involved in the delivery of the Services provided (i) it is strictly on a need to know basis and (ii) such subcontractors shall be bound by such terms of confidentiality at least as restrictive as those contained herein.

**8. Warranty.** McAfee warrants that the Services will be performed in a professional manner consistent with relevant industry standards. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MCAFEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED AND DOES NOT GUARANTEE FOR (i) VULNERABILITY SERVICES TO FIND ALL VULNERABILITIES (ii) SERVICES TO BE UNINTERRUPTED (iii) SERVICES TO HAVE 100% AVAILABILITY; OR (iv) SERVICES TO BE ERROR FREE. MCAFEE DISCLAIMS ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND TITLE. MCAFEE SHALL USE ALL REASONABLE EFFORTS TO ENSURE THAT ALL INFORMATION IT PROVIDES OR MAKES AVAILABLE IS ACCURATE HOWEVER, EXCEPT IN THE CASE OF GROSS NEGLIGENCE OR WILFUL ACTS, CUSTOMER AGREES THAT MCAFEE SHALL NOT BE LIABLE FOR ANY ERRORS, OMISSIONS OR INACCURACIES WITH RESPECT TO SUCH INFORMATION.

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

**10. Limitation of Liability.** MCAFEE'S LIABILITY FOR DAMAGES FROM ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO THE SERVICES OR DELIVERABLE SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE APPLICABLE SERVICES. MCAFEE SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF DATA, EVEN IF MCAFEE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Neither the foregoing nor any other provision of the Agreement shall exclude or limit in any way the liability of McAfee for death or personal injury caused by McAfee's negligence, willful misconduct or

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intention.

**11. Insurance.** Each party shall 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 upon request.

**12. Termination and Rescheduling.** In the event of any material breach of this Agreement by either party, the non-breaching party may cancel this Agreement by giving 30 days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the 30 day period. Any terms which by their nature extend beyond the termination remain in effect until fulfilled. Customer is permitted to reschedule a consulting engagement one time, with at least ten (10) business days prior notice, without incurring additional fees. In all events, this Agreement may be terminated for convenience upon either party providing the other party with sixty (60) days prior written notice. Upon such termination for convenience, the parties agree that (i) McAfee shall have no further obligation to provide any Services to the Customer unless scheduled during the term of this Agreement and (ii) all orders for Services as ordered by the Customer and accepted by McAfee prior to the effective date of termination shall remain effective, due and payable in accordance with the relevant SOW or Customer order.

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

**14. Internal Purpose and Assignment.** Any Services are made available to Customer for its own internal business purposes and not for the benefit of third parties. Assignment of this Agreement is prohibited without the express written consent of the other party; except that McAfee may assign its interest in this Agreement in connection with a merger or other business combination in which McAfee is not the surviving entity.

**15. Third party Rights.** This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

**16. Data Protection.** Customer warrants and represents that Customer has obtained all necessary consents to provide personal data (as required by applicable data protection or privacy laws in the Territory) to McAfee and that McAfee may legally possess and process personal data in accordance with this Agreement. Customer shall remain the controller of the personal data.

**17. Governing Law.** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the relevant country as stated in the Territory Table. The parties irrevocably agree that the [courts of the said relevant country as stated in the Territory Table below have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the

Agreement or its subject matter or formation (including non-contractual disputes or claims).

**18. Export and Money Laundering.** Customer agrees to comply with all applicable export and import laws and regulations in the use of any McAfee Material. Customer agrees to comply with payment terms and conditions contained in the Corporation Money Laundering Prevention Policy (as provided by McAfee from time to time); non-compliance with the said terms and conditions may result in refusal by McAfee to accept the forms of payment from Customer.

**19. Complete Agreement.** These Terms and, if any, the relevant SOW set out the entire understanding of the parties, superseding and excluding all prior agreements and understandings as to the subject matter hereof, notwithstanding any oral representations or statements to the contrary, including , without limitation any such pre-printed terms and conditions of the Customer Order (if any). If applicable, in the event of any conflict between these Terms and any SOW, the terms of the SOW shall prevail. These Terms may only be modified in writing, executed by both parties. A failure of either party to exercise any right provided for herein, shall not be deemed to be a waiver of any right hereunder. If any provision, or part thereof, in these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms shall remain in full force and effect.

## 20 FORCE MAJEURE

In the event of extraordinary circumstances beyond the parties' control that prevent or severely impede the due performance of obligations under this Agreement, and which would be regarded as force majeure under the normal rules of commercial practice, the afflicted party shall notify the other party without undue delay. The afflicted party's obligations shall be suspended for the duration of this extraordinary situation. The other party's counter-obligations shall be suspended during the same period. In a force majeure situation, each of the parties is entitled to abandon this Agreement, subject to 10 days' written notice, with the consent of the other party or if the situation lasts or is expected to last for more than 90 days, counting from the time when the situation arose. If this Agreement is cancelled pursuant to the provisions of this clause, McAfee shall be entitled to payment for the executed portions of this Agreement. Force majeure situations do not give the parties other rights aside from those specified herein

**21. Additional Terms for Training Services:** In addition to the above terms and conditions the following terms shall apply solely for any training Services ordered by the Customer:

21.1 All training fees must be received by McAfee at least fourteen (14) days prior to the commencement of the relevant training course. Upon payment, in the event Customer cancels the training and such notice is received less than seven (7) days prior to the commencement of the training course, McAfee shall be entitled to the full amount of fees relating to the cancelled training course (including invoicing for this amount if appropriate).

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If Customer cancels the training in writing at any time between 7 and 14 days of the commencement of the training course, McAfee shall be entitled to charge Customer 50% of relevant fees for the training course. No cancellation fee shall be due in the event Customer provides McAfee with a cancellation notice of more than 14 days. Customer may substitute the attendees for the relevant training course with such other employees with substantially equivalent qualifications required for participation in the training course.

If McAfee cancels the training course and it is unable to provide a suitable substitute training course, McAfee's sole liability shall be to refund the Customer the training fees paid by the Customer. For the avoidance of doubt, McAfee shall not be liable for any travel or hotel costs associated with the cancellation.

All courses for training Services must be booked by Customer or arranged within one (1) year of the date of McAfee invoice otherwise McAfee may, in its sole discretion, cancel the portion of training Services that have not been booked or arranged by the Customer. Customer shall agree that any fees paid thereunder shall not be refundable or available for credit or exchange.

21.2 McAfee shall provide confirmation of the training Services to Customer prior to the commencement of the training course.

21.3 Fees paid for training Services to be performed at McAfee training centers will cover the fees for the trainer, use of the training systems, reasonable refreshments and course materials for participants. McAfee shall not be liable for any travel or accommodation costs incurred by Customer to attend the relevant training course. Unless otherwise specified, all training Services shall be provided in the English language.

21.4 McAfee reserves the right to use substitute instructors, to modify the content slightly and to make changes to the dates and locations upon notice to the Customer. If the Customer cannot attend as a result of such changes, Customer may rebook for another available course. McAfee shall not be liable for any Customer costs associated with the rescheduling.

Customer may reschedule the training course, subject to availability, by providing McAfee with 14 days prior written notice.

21.5 McAfee reserves the right to refuse or to limit any training Services if Customer's attendee fails to satisfy the requirements for the relevant training course. In addition, McAfee reserves the right to refuse, limit or cancel any training Services if a Customer's attendee in the opinion of McAfee has displayed unreasonable behavior or is deemed to be violent, abusive or disruptive. In either case, Customer will not be entitled to any refunds.

21.6 All training materials and systems provided by McAfee as part of the training Services are provided on an "as-is" basis, without warranty of any kind, whether express, implied, statutory or otherwise especially as to quality, reliability, timeliness, usefulness, sufficiency and accuracy.

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## EXHIBIT A

### Territory Table

Region	Territory	McAfee Entity	Laws and relevant courts
NA	Canada	McAfee Canada ULC	Ontario
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 Netherlands B.V.	Netherlands
EMEA	Finland	McAfee Netherlands B.V.	Netherlands
EMEA	The Netherlands	McAfee Netherlands B.V.	Netherlands
EMEA	South Africa	McAfee Netherlands B.V.	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.	Netherlands
EMEA	Israel	McAfee (Israel) Ltd	Israel
EMEA	Saudi Arabia	McAfee Netherlands B.V.	Netherlands
EMEA	Belgium	McAfee Netherlands B.V.	Netherlands
EMEA	Poland	McAfee Netherlands B.V.	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 (Singapore) Pte Ltd	Singapore
APAC	Singapore and rest of APAC	McAfee (Singapore) Pte Ltd	Singapore
JAPAN	Japan	McAfee Co., Ltd.	Japan