



MASTER AGREEMENT

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# MASTER AGREEMENT

Between

SPACE AND NAVAL WARFARE  
SYSTEMS CENTER PACIFIC ON  
BEHALF OF THE DEPARTMENT OF  
DEFENSE ENTERPRISE SOFTWARE  
INITIATIVE (DOD ESI)

And

MCAFEE PUBLIC SECTOR LLC



## MASTER AGREEMENT

This Master Agreement (the “Agreement”) is made and entered into on the date of last signature below (“Effective Date”), and between the Parties defined below.

### 1. PARTIES TO THIS AGREEMENT (THE “PARTIES”)

#### 1.1 Contact and Entity Information

Publisher Entity Name (“Licensor,” “Provider” or “McAfee”)	“Licensee”
McAfee Public Sector LLC	DoD ESI on behalf of the United States Government
Address	Address
2821 Mission College Boulevard, Santa Clara, CA 95054	SSC-Pacific, Care of DoD ESI 53560 Hull Street San Diego, CA 92152-5001
POC	POC
Name: David Knisely Phone: 717-525-2217 Email: David_Knisely@mcafee.com	Name: Stacie Sedgwick Phone: 619-553-5587 Email: <a href="mailto:stacie.sedgwick@navy.mil">stacie.sedgwick@navy.mil</a>  Name: Shane Mahelona Phone: 619-553-5663 Email: <a href="mailto:shane.mahelona@navy.mil">shane.mahelona@navy.mil</a>
Notification Info	Notification Info
General Counsel 2821 Mission College Boulevard Santa Clara, CA 95054 MFEpslegal@mcafee.com	Contracting Officer, SSC-PAC DoD ESI, 53560 Hull Street San Diego, CA 92152-5001

#### 1.2 Licensor Defined

McAfee Public Sector LLC shall be referred to as the “Licensor” or “McAfee” throughout this Agreement. In the Exhibits, it may be referred to as “Provider” or “McAfee.”

#### 1.3 Licensee Defined

Licensee is entering into this Agreement on behalf of the United States Government. For purposes of this Agreement, Licensee shall include the Department of Defense (DoD), the Intelligence Community, and the Coast Guard. In the Exhibits, Licensee may be referred to as “Customer.”



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### 1.4 Glossary

The words included in the Glossary attached as Exhibit 1 shall have the meaning and application to this Agreement as defined in the Glossary.

## 2. GRANT OF LICENSE; PROPRIETARY RIGHTS; COPY AND USE TERMS

### 2.1. License Grant.

Subject to the terms and conditions of this Agreement, the Licensor hereby grants to Licensee a non-exclusive, world-wide right to use the Software (for the purpose of this Agreement, to use the Software includes to download, install, and access the Software) listed in the Grant Letter solely for Licensee's own internal business operations. Licensee is not granted rights to Updates and Upgrades unless Licensee has purchased Support (or a service subscription granting rights to Updates and Upgrades). Licensee is permitted to install Software at Licensee's premises on its own equipment or at the location of any third party that is designated by the Licensee to manage or host the Software on Licensee's behalf.

### 2.2. Proprietary Rights.

The Software, including, without limitation, its object code and source code, whether or not provided to Licensee, is strictly confidential to Licensor. Licensor owns exclusively and reserves all – and Licensee may not exercise any – right, title, and interest in and to the Software, including, without limitation, all intellectual property rights in and to the Software, except to the extent of the limited Software use license granted to Licensee in this Agreement. This Agreement is not an agreement of sale, and no title, intellectual property rights, or ownership rights to the Software are transferred to Licensee pursuant to this Agreement. Licensee acknowledges and agrees that the Software and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the 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 Software, all derivative works based upon any of the foregoing, and all copies of the foregoing are trade secrets and proprietary property of Licensor. Licensee acknowledges that Licensor considers the foregoing to have great commercial value to Licensor.

### 2.3. Copy and Use Terms.

#### 2.3.1. Product Entitlement.

The use of the Software depends on the licenses purchased (e.g. nodes) and is subject to the Product Entitlement Definitions set forth at <http://www.mcafee.com/us/resources/legal/mcafee-product-entitlement-definitions.pdf> on the applicable date of Licensee's Grant Letter.

#### 2.3.2. Multiple Platforms/Bundles.

If the Software supports multiple platforms or if Licensee receives the Software bundled



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with other software, the total number of devices on which all versions of the Software is installed may not exceed Licensee's product entitlement. Certain Software licensed as part of a suite-based Licensor product may also require the purchase of a separate Licensor server license in order to use the Software on certain types of servers, in each case as specified in the Documentation.

2.3.3. Term. The license is effective for a limited period of time ("Term") in the event that such Term is set forth in the Grant Letter, otherwise the licenses shall be perpetual.

2.3.4. Copies. Licensee may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.

2.3.5. Managing Parties.

Licensee may permit a third party with which Licensee enters into a contract to manage Licensee's information technology resources ("Managing Party"), provided that (i) the Managing Party only uses the Software for Licensee's internal operations and not for the benefit of another third party or the Managing Party, (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement and (iii) Licensee provides Licensor with written notice that a Managing Party will be using the Software on its behalf. Licensee shall be responsible for each Managing Party's compliance with or breach of the terms of this Agreement.

2.3.6. General Restrictions.

Licensee may not, and Licensee may not cause or allow any third party to: (i) decompile, disassemble or reverse-engineer the Software; or create or recreate the source code for the Software; (ii) remove, erase, obscure, or tamper with any copyright or any other product identification or proprietary rights notices, seal, or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies of the Software and Documentation made by Licensee; (iii) lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute, or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise; (iv) modify, adapt, tamper with, translate, or create derivative works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including, without limitation, any routine, script, code, or program) having any functional attributes, visual expressions, or other features similar to those of the Software or to compete with Licensor; (v) except with Licensor's prior written permission, publish any performance or benchmark tests or analysis relating to the Software. Licensee may not run or operate the Software in a cloud, Internet-based computing, or similar on-demand computing environment unless Licensee's Grant Letter specifically provides such.



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### 2.4. Transfers

Transfers to outside organizations are permitted with the express written consent of Licensor. Transfers within the DoD, Coast Guard, and Intelligence Community are permitted without prior express written consent of Licensor provided Licensee has a valid license under this Agreement. A transfer shall be subject to the Licensee's execution of appropriate documentation of the transfer, as may be required by Licensor, documenting the Transferee's agreement with the terms of this Agreement and any applicable Grant Letter. The Transferee shall be bound by the terms and conditions of this Agreement.

### 2.5. Export Control

This license grant is subject to applicable laws, including U.S. export laws and regulations. Licensee acknowledges that the Software may be subject to U.S. and when applicable, European Union export regulations. Licensee shall comply with applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. Licensee shall not export the Software to any individual, entity or country prohibited by applicable law or regulation. Licensee is responsible, at its own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Software. For additional information regarding exporting and importing the Software, see "Export Compliance" at <https://www.mcafee.com/us/about/export-compliance.aspx>. Licensor reserves the right to update this website from time to time at its sole discretion. If Licensor receives notice that Licensee is or becomes identified as a sanctioned or restricted party under applicable law, then Licensor will not be obligated to perform any of its obligations under this license if such performance would result in violation of the sanctions or restrictions.

### 2.6. Language(s)

Licensor shall supply Licensee with the Software in the languages designated for each item listed below at no additional charge:

- 2.6.1. Software field names and other Literals generally available or shown on an HTML page or other electronic screen presented to users. Languages required: American English.
- 2.6.2. Software documentation. Languages required: American English.
- 2.6.3. Software training materials and training classes, whether delivered in Licensor classrooms, on line or at Licensee's site. Languages required: American English.
- 2.6.4. Software support services whether by telephone, on line, or otherwise. Languages required: American English.

### 2.7. Self-Audit

Upon ninety (90) days' prior notice Licensor may request, and Licensee must provide, a software-facilitated system-generated report (the "System Report") verifying Licensee's Software deployment. Licensee acknowledges that the System Report is based on



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technological features of the Software that provide Software deployment verification. If the Software does not contain technological features that provide Software deployment verification, Licensee will prepare and provide to Licensor within the ninety (90)-day period an accurate Software deployment verification report for the Software. Licensor will only request the System Report (or a prepared Software deployment verification report) one time per year, and will not unreasonably interfere with the conduct of Licensee's operations. However, if a System Report or Licensee's prepared Software deployment verification report identifies that Licensee is in possession of licenses in excess of what has been purchased, Licensor will invoice Licensee for the number of unpaid licenses downloaded or installed. The limit of Licensee's responsibility for any unauthorized use of the Software is the requirement that Licensee purchase additional licenses equal to the number of unpaid licenses, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law.

### 2.8. Temporary Use of Software During Times of Conflict

As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, at no additional cost, Licensee may temporarily deploy and install or use Software on, or access from qualified desktops, laptops, mobile devices or servers, a reasonable number of Licensor's Software products then currently licensed under this Agreement ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations such as hurricanes, floods, earthquakes, insurrections, terror attacks or other similar emergencies, where temporary duty stations are needed due to the destruction of government offices, or because it becomes the government's mission to support efforts to mitigate or otherwise manage the emergency situation.

To the extent requested by Licensee, to support a TED License, Licensor will provide a sixty (60) day single seat network license which can be copied for use on any number of computers. Longer license periods may be negotiated on a case-by-case basis, or may be offered by Licensor as standard license periods, where applicable to specific products. Multiple TED events may also be addressed by the parties through negotiation on a case-by-case basis.

After a TED has ended, or within six (6) calendar months of the start of any TED licenses, whichever is shorter, unless the parties have agreed on a longer period ("Temporary Use Period"), the Licensee will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional licenses equal to the number of TED Licenses not removed from service. Licensee agrees to use the TED Licenses in accordance with the terms contained in this Agreement.

### 2.9. Licenses for Software Evaluation

If the Software has been identified by Licensor as "Evaluation" Software, then the provisions of this Section 2.9 apply and shall supersede any other conflicting term of this Agreement. Licensee's royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation



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purposes only, is limited to thirty (30) days unless otherwise agreed to in writing by Licensor. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Consequently, Evaluation Software is provided to Licensee "AS IS" and Licensor disclaims any warranty or liability obligations to Licensee of any kind. Support is not available for Evaluation Software. Any information about the Evaluation Software gathered from its use shall be used solely for evaluation purposes and shall not be provided to any third parties. The restrictions described in Section 2.3.6 apply. If Licensee fails to destroy the Evaluation Software after the evaluation period has expired, Licensor may, at its discretion, invoice Licensee in an amount equal to the DoD ESI Product Price List Price for the Software. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, MCAFEE'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS UNDER THIS AGREEMENT RELATED TO EVALUATION SOFTWARE, OR IN CONNECTION WITH EVALUATION SOFTWARE, SHALL BE LIMITED TO THE SUM OF FIFTY (50) U.S. DOLLARS OR THE EQUIVALENT IN LOCAL CURRENCY IN TOTAL.

### 2.10. Beta Software

If the Software that Licensee receives has been identified by Licensor as "Beta" Software, then the provisions of Section 2.9 above shall apply accordingly. Licensor has no obligation to Licensee to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by Licensor, Licensee will provide feedback to Licensor regarding testing and use of the Beta Software, including error or bug reports. Licensee agrees to grant Licensor a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute and make derivative works and incorporate the feedback into any Licensor product at Licensor's sole discretion. Upon receipt of a later unreleased version of the Beta Software, or release by Licensor of a publicly released commercial version of the Beta Software, Licensee agrees to return or destroy all earlier Beta Software received from Licensor.

### 2.11. "Free" or "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 Licensor under the terms of the applicable FOSS Code license for such component; Licensee's receipt of FOSS Code components from Licensor under this Agreement neither enlarges nor curtails Licensee'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's Documentation.

### 2.12. Unrestricted Right to Acquire Competing Products

Nothing in this License Grant or elsewhere in this Agreement or in other documents concerning this license or the software licensed herein shall preclude Licensee from purchasing other identical, similar or competitive software from other Publishers or Resellers at any time and for any reason whatsoever.



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### 3. LIMITED WARRANTY AND DISCLAIMER

#### 3.1. Software

##### 3.1.1. Limited Warranty

Licensor warrants that, for a period of one hundred twenty (120) days from the purchase date (“Warranty Period”), the Software licensed hereunder will perform substantially in accordance with the Documentation (the “Limited Warranty”).

##### 3.1.2. Exclusive Remedy.

In case of any breach of the above Limited Warranty, as Licensee’s exclusive remedy and Licensor’s entire obligation and liability Licensor will (i) repair or replace the Software or (ii) if such repair or replacement would in Licensor’s opinion be commercially unreasonable, upon Licensor’s receipt of Licensee’s written representation and promise that Licensee has removed all instances of the Software and will not use the Software, refund the price paid by Licensee for the applicable Software.

##### 3.1.3. Exclusion of Warranty.

THE ABOVE LIMITED WARRANTY WILL NOT APPLY IF: (i) THE WARRANTED PRODUCTS ARE NOT USED IN ACCORDANCE WITH THIS AGREEMENT OR THE DOCUMENTATION, (ii) THE SOFTWARE OR ANY PART THEREOF HAS BEEN MODIFIED BY ANY ENTITY OTHER THAN LICENSOR OR (iii) A MALFUNCTION IN THE SOFTWARE HAS BEEN CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY LICENSOR.

##### 3.1.4. Disclaimer.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED “AS IS” AND LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, AND LICENSOR 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. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY, REPRESENTATION, OR GUARANTEE AS TO THE SOFTWARE’S USE OR PERFORMANCE AND DOES NOT WARRANT, REPRESENT, OR GUARANTEE THAT THE OPERATION OF THE SOFTWARE WILL BE FAILSAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS, OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.

##### 3.1.5. High Risk Systems Terms.

3.1.5.1. Definition. “High Risk System” means a 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



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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, train, boat or vehicle navigation or communication systems, air traffic control, weapons systems, nuclear facilities, power plants, medical systems and facilities, and transportation facilities.

3.1.5.2. Disclaimer. THE SOFTWARE MAY FAIL AND IS NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH RISK SYSTEMS. WITHOUT LIMITING ANYTHING ELSE, MCAFEE HAS NO RESPONSIBILITY FOR, 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 LICENSEE'S USE OF THE SOFTWARE ON OR IN A HIGH RISK SYSTEM, INCLUDING, WITHOUT LIMITATION, THOSE THAT (i) COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, OR (ii) ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF THE HIGH RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE SOFTWARE OR THAT THE FAILURE OF THE SOFTWARE CAUSED A HIGH RISK SYSTEM TO FAIL.

### 3.2. Hardware.

Licensor warrants the Hardware in accordance with the McAfee Limited Warranty on Hardware attached as Exhibit 2.

### 3.3. Product Use Warranty.

Licensor warrants and represents that it has not knowingly or intentionally introduced or caused to be introduced into the Software any disabling device, time bomb, node lock, time-out, or other function, whether implemented by electronic, mechanical, or other means, that restricts or attempts to restrict Licensee's use or access to the Software, whether based upon a specific hardware configuration, frequency or duration of use, or other limiting criteria. Licensor further warrants and represents that it will use commercially reasonable efforts to ensure that the Software, as delivered, does not contain any viruses, attack scripts, worms, Trojan horses, backdoors, spyware, or other malicious software code intended to cause harmful events, such as one or more of the following, to Licensee's computing equipment and/or network on which the Software is installed: 1) security breaches; 2) damage to hardware; 3) alteration or erasure of



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stored data; 4) alteration or erasure of installed computer programs; and 5) unauthorized collection and transmission of stored data.

#### 4. INTELLECTUAL PROPERTY INDEMNITY

##### 4.1. Indemnity.

Licensor will, at its expense, defend and indemnify Licensee against claims or actions asserted against Licensee in any suit or proceeding for patent or copyright infringement, or for Licensor's trade secret misappropriation, asserted solely against the Software or solely against an installation of the Software on a device on which the Software is intended to be used (the Claim). For the purposes of this Agreement, "indemnify" shall mean the Licensor's specific, exclusive, and limited obligation to: (1) pay any judgments, fines, and penalties finally awarded by a court of competent jurisdiction or any settlements agreed to by Licensor in writing and (2) reimburse the U.S. Government for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurred in handling the Claim. The Licensor's obligation to reimburse the U.S. Government for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurred in handling the Claim exists: (1) when the U.S. Government has sole control of the defense and settlement of any such Claim and (2) in the instance where the Licensor seeks the assistance of the U.S. Government, where the U.S. Government has expressly delegated its authority to control the defense and/or settlement of any such Claim to Licensor.

The parties to this Agreement recognize that, per the authority under 28 U.S.C. § 516, the U.S. Department of Justice (DOJ) retains the authority to represent the U.S. Government or control the defense and any settlements of Claims brought against the U.S. Government. The DOJ may, in its sole discretion, delegate to Licensor its right of defense of a Claim and the authority to control any potential settlements thereof. If the DOJ does not delegate the right of defense of a Claim and the authority to control any potential settlements thereof, Licensee will not settle or compromise any Claim without the prior written consent of Licensor, and Licensee: (i) agrees that any litigation or settlement negotiation shall not bind Licensor; (ii) shall not impair Licensor's own rights, defenses, or claims against the third party claimant; (iii) shall not have the right to settle any Claim, make any admissions, or waive any defenses on behalf of Licensor, and (iv) shall in good faith reasonably cooperate and consult with Licensor during the course of settlement negotiations and prosecution of the Claim, and shall afford Licensor free access to all communications and documentation with all parties, witnesses, and judicial or administrative bodies associated with such Claim upon Licensor's request. If the DOJ delegates any such rights to the Licensor, the U.S. Government will cooperate with all reasonable requests of Licensor made in the defense and/or settlement of a Claim. In instances where such delegation occurs, the U.S. Government shall have the right to participate in any such suit or proceeding through counsel of its own choosing at its own expense and without derogation of Licensor's authority to control the defense and settlement of a Claim.

Licensor agrees that it shall not, without the U.S. Government's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which: (A)



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states or implies that the U. S. Government has engaged in any wrongful or improper activity other than the use of the material, in accordance with this Agreement, which is the subject of the Claim, (B) requires the U.S. Government to perform or cease to perform any act or relinquish any right other than as required by this Agreement, or (C) requires the U.S. Government to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the U.S. Government. In compliance with the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any costs, fees, or damages arising from Claims against Licensor for use of the Software by Licensee under this Agreement. Licensor agrees, upon the written request of the U.S. Government, to cooperate in the defense and settlement of all Claims irrespective of whether a delegation of rights has been made to Licensor to defend and/or settle a Claim.

### 4.2. Exclusions.

Notwithstanding anything else in this Agreement, Licensor has no obligation to indemnify or defend the following claims:

- 4.2.1. those asserted against elements or features in, or operation of, the Software attributable in whole or in part to Licensor's inclusion of technology given by Licensee to Licensor, or in compliance with Licensee's designs, specifications or instructions, including inclusion of software supplied by Licensee or included at Licensee's request;
- 4.2.2. those asserted against the Software attributable in whole or in part to the modification of the Software by anyone other than Licensor, or against the use of the Software, where that use is contrary to its specification or instructions for use;
- 4.2.3. those asserted against the combination of the Software with anything other than an installation of the Software on a device for which the Software is intended to be used;
- 4.2.4. those including an allegation that Licensor, Licensee, or the Software indirectly infringes, including by inducing or contributing to a third party's infringement, where Licensor has not previously consented to Licensee's transfer of the Software to that third party or to that third party's use of the Software;
- 4.2.5. any claim (such as a counterclaim) that was made in response to a suit or proceeding first filed by Licensee alleging patent infringement, where such claim was foreseeable by Licensee prior to Licensee's filing of the suit or proceeding and Licensee failed to consult with Licensor prior to Licensee's filing of the suit or proceeding;
- 4.2.6. those asserting that Licensee willfully infringed, only to the extent permitted by 28 U.S.C. § 1498 and provided that Licensee received prior written notice from Licensor to cease and desist use of the Software.

### 4.3. Conditions.

Licensor's obligations under this Section 4.3 are conditioned on Licensee's prompt written notice to Licensor of a claim and on Licensee's giving to Licensor the right to control and conduct the defense and any settlement of the claim to the extent permitted under 28 U.S.C. § 516. Licensee must fully and timely cooperate with Licensor and provide Licensor with all reasonably requested authority, information and assistance. Licensor will not be responsible for any costs, expenses or compromise incurred or made by Licensee without Licensor's prior written consent.



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### 4.4. Remedies.

In the event a final judgment of infringement is determined by a court of competent jurisdiction against Licensee, Licensor may, in its sole discretion and at its own expense: (i) procure for Licensee the right to continue using the Software; (ii) replace the Software with non-infringing Software; (iii) modify the Software so that it becomes non-infringing; or (iv) upon Licensor's receipt of Licensee's return of the Software to Licensor, refund the residual value of the purchase price paid by Licensee for the infringing Software, depreciated using a straight-line method of depreciation over a three (3) year period from the date of delivery of the Software to Licensee, as well as refund any pre-paid support and/or service fee attributable to related support services to be delivered after the date such service is stopped. Upon receiving notice from Licensor to discontinue use of affected Software, Licensee may continue its use of the Software as authorized under this Agreement and subject to 28 U.S.C. § Section 1498 in matters of national security and in such cases, Licensor shall have no obligation to indemnify or other liability whatsoever, to the Government or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 § U.S.C. 1498, as set forth in 48 C.F.R. § 27.201-1(a). Licensor may participate at its expense in the defense of any such action.

### 4.5. Exclusive Remedy.

The foregoing states Licensor's entire obligation and liability and Licensee's exclusive remedy for claims of patent or copyright infringement, or trade secret misappropriation, by the Software.

### 4.6. Licensee Indemnification of Licensor.

Licensee is prohibited by federal Law from indemnifying any entity. (See FAR Subpart 52.212-4 (v) and the Anti-Deficiency Act.) Licensee agrees to pay for any loss, liability or expense, which arises out of or relates to Licensee's acts or omissions outside the scope of this Agreement with respect to its obligations hereunder, where a final determination of liability on the part of Licensee is established by a court of law or where settlement has been agreed to by Licensee. This provision shall not be construed to limit the Licensee's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of Licensee.

### 5. RESERVED

### 6. TECHNICAL SUPPORT AND MAINTENANCE

The McAfee Technical Support and Maintenance Terms and Conditions attached as Exhibit 4 apply if Licensee has purchased Support. After the support or service subscription period specified in a Grant Letter has expired, Licensee has no further rights to receive any Support including Upgrades, Updates and telephone support. Licensee will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or its own internal policies or guidelines in order to disclose to Licensor, in connection with Licensor's performance of Support or otherwise under this Agreement, applicable personally identifiable information, data, and material. The following changes shall be made to the McAfee Technical Support and Maintenance Terms and Conditions attached as Exhibit 4.



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- 6.1. In Section 3 of Exhibit 4, any reference to non-transferability shall be read in accordance with Section 2.4, Transfers.
- 6.2. In Section 7 of Exhibit 4, the additional out-of-compliance fee for lapsed Support, above and beyond purchase of reinstated Support since expiration, shall not be required.
- 6.3. Notwithstanding McAfee's right to terminate Support, Licensee shall still be entitled to Support if it rolls back to or reinstalls a supported version of the Software within a reasonable time of discovering Licensee's use of an unsupported version of the Software.
- 6.4. In Section 13(d) of Exhibit 4, Licensee shall pay any Hardware inspection fee based upon the applicable time and materials rates for Professional Services set forth in this Agreement.
- 6.5. In Section 18(c) of Exhibit 4, the governing law shall be read in accordance with Section 7.9, Governing Law.

### 7. GENERAL PROVISIONS

#### 7.1. Order of Precedence

In the event of a conflict between this Agreement, and its Exhibits, or any other documents referenced herein, this Agreement shall take precedence over the Exhibits unless an Exhibit expressly references a provision of the Agreement that it supersedes, and both shall take precedence over any other documents incorporated by reference.

#### 7.2. Confidentiality

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



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where reasonably possible. Unless otherwise agreed to by both Parties, upon termination of this Agreement, each Party will return or destroy the other Party's tangible Confidential Information.

### 7.3. Severability

If any clause of this Agreement is found by a court to be invalid, unenforceable, or prohibited under law the parties will promptly enter into good-faith negotiations to modify such clause to render it in accordance with applicable law while reflecting the original intention of the parties as closely as possible, and the remainder of this Agreement shall continue in full force and effect.

### 7.4. Term

Except as set forth in Section 7.5, the term of this Agreement shall begin on the Effective Date of this Agreement and shall terminate on expiration of the period of performance.

### 7.5. Termination

Licensor may not terminate this Agreement for non-payment. Pursuant to FAR Subpart 52.212-4 (l) and (m), the Licensee may terminate this Agreement for convenience or for cause. Any terms of this Agreement which by their nature should survive the termination of this Agreement shall survive such termination.

### 7.6. Limitation of Remedies and Damages

7.6.1. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, NEGLIGENCE, CONTRACT OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND, LOSS OF GOODWILL, LOSS OF PERSONNEL SALARIES, LOST PROFITS OR REVENUE, DAMAGES DUE TO WORK STOPPAGE AND/OR COMPUTER FAILURE OR MALFUNCTION, AND/OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES FROM A THIRD PARTY, 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.

7.6.2. REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT AND/OR ANY OTHER LEGAL THEORY, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ITS SUBJECT MATTER EXCEED THE AMOUNT OF TOTAL FEES PAID OR PAYABLE BY LICENSEE FOR THE SOFTWARE GIVING RISE TO SUCH CLAIM DURING THE EIGHTEEN (18) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM.

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



## MASTER AGREEMENT

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nothing in the Agreement shall exclude or limit either party's liability for fraud or for any other matter for which liability cannot be excluded by law.

7.6.4. THE LIMITATION OF LIABILITY IN THIS SECTION 7.6 IS BASED ON THE FACT THAT END USERS USE THEIR COMPUTERS FOR DIFFERENT PURPOSES. THEREFORE, ONLY LICENSEE CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO ITS NEEDS IN THE EVENT THAT AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE BUSINESS REASONS, LICENSEE AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION 7.6 AND ACKNOWLEDGES THAT WITHOUT ITS AGREEMENT TO THIS PROVISION, THE FEE CHARGED FOR THE SOFTWARE WOULD BE HIGHER.

### 7.7. Assignment

Licensor may assign this Agreement, in whole, together with any data collected or maintained in connection with performance under this Agreement, at any time subject to Licensee's prior written consent.

### 7.8. Relationship of Parties

The parties shall have the relationship of independent contractor with respect to one another. The parties specifically agree neither party is or may represent itself to be an employee, employer, franchiser, partner, broker, servant, agent, or legal representative of the other party for any purpose whatsoever. Neither Party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party, or to bind the other Party in any matter or thing whatsoever. The Parties do not intend to form a partnership or joint venture as a result of this Agreement.

### 7.9. Governing Law

All disputes arising out of or relating to this Agreement or its subject matter will be governed by Federal law of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. This Section shall prevail over inconsistent provisions in the Exhibits to this Agreement.



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### 7.10. Integration

This Agreement, its Exhibits, and all documents incorporated by reference, represent the entire agreement by and among the Parties with respect to the acquisition and licensing of the Software, and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. If Licensee issues an order to an Authorized Partner and the terms and conditions of the order conflict with the terms and conditions of (i) this Agreement or (ii) the Grant Letter, then the terms and conditions specified in this Agreement and in the Grant Letter shall control. No terms or conditions of any pre-printed or boilerplate purchase order of Licensee's, or any click-through license of Licensor, or any other document of either party will govern the transactions contemplated by this Agreement. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of the party to be bound. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by the party against which such waiver is to be enforced.

### 7.11. Rights of Survivorship

This Agreement shall survive unto Licensor, its successor, rights and assigns. The Licensee's rights to use the Software and the terms and conditions of this Agreement shall survive the acquisition or merger of Licensor by or with another entity.

### 7.12. Notice to U.S. Government End Users

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

### 7.13. Privacy and Collection of Licensee Data.

- 7.13.1. The Software, Support or service subscription may employ applications and tools to directly and/or automatically collect personally identifiable, sensitive or other information about Licensee and Users (e.g., including, without limitation, Licensee's and Users' name, address, e-mail address and payment details), their computers (e.g., including, without limitation, details about the computers, devices, applications, and networks, including without limitation IP address, browser characteristics, device ID, operating system, and language preferences); usage patterns of products and services (e.g., including, without limitation, referring URLs, dates and times of website visits, and clickstream data); files stored on their computers, or their computers' interactions with other computers (e.g., including, without limitation, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture,



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operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, McAfee products installed, McAfee components, processes and services information, frequency and details of update of McAfee components, information about third party products installed, extracts of logs created by McAfee, usage patterns of McAfee products and specific features, etc.), details about Internet, App, or network usage (including URLs or domain names of websites, information about applications that attempt to access the network, or traffic data); information about files and communications, such as potential malware or spam (which may include computer files, emails and attachments, email addresses, metadata, and traffic data, or portions or hashes)(collectively, "Licensee Data"). McAfee products and services may also process certain data to provide updates and reports. These update functions may check Licensee's system to see whether files relating to the services need to be refreshed or modernized. For example, products and services may transmit report files to McAfee. These files contain information, including the number of checked, suspicious, infected, or unwanted files or emails, the number of infections, the date and hash values of the detected infections, and the number of false negatives/false positives.

- 7.13.2. The collection of this Licensee Data may be necessary to provide Licensee and Users with the relevant Software, Support or service subscription functionalities as ordered (e.g., including, without limitation, detecting and reporting threats and vulnerabilities on Licensee's and Users' computer network), to enable McAfee to improve its Software, Support or service subscription (e.g., including, without limitation, content synchronization, device tracking, troubleshooting, etc.), and to further or improve overall security for Licensee and Users. Licensee may be required to uninstall the Software or disable Support or its service subscription to stop further Licensee Data collection that supports these functions.
- 7.13.3. McAfee may share Licensee Data with its Affiliates for the fulfillment of this Agreement, such as to: (i) provide services and content (e.g., registration, sales, and customer support); (ii) help detect and prevent illegal acts and violations of McAfee policies; and (iii) guide its decisions about McAfee products, services, and communications; with authorized service providers who perform services for McAfee (including cloud services, data storage, sales, marketing, investigations, payment processing, customer support, and bill collection); as necessary and appropriate to prevent physical, financial, or other harm, injury, or loss, including to protect against fraud or credit risk; to legal, governmental, or judicial authorities, as instructed or required by those authorities or applicable laws, or in relation to a legal activity, such as in response to a subpoena or investigating suspected illicit activity (including identifying those who use McAfee services for illegal activities); in connection with, or during negotiations of, an acquisition, merger, asset sale, or other similar business transfer that involves substantially all of McAfee's assets or



## MASTER AGREEMENT

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functions where Licensee Data is transferred or shared as part of the business assets.

- 7.13.4. By entering into this Agreement, Licensee and Users agree to the collection, processing, copying, backup, temporary storage, transfer and use of this Licensee Data by McAfee and its Authorized Partners, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of Licensee's or User's own as part of the Software, Support or service subscription. McAfee will only collect, process, copy, backup, store, transfer and use personally identifiable information in accordance with this Agreement and reasonable internal processing needs. Licensee acknowledges and agrees that the Software may contain functionality to detect and report threats and vulnerabilities on Licensee's computer network. Such functionality may automatically collect certain types of Licensee Data and submit such information to McAfee. No personally identifiable Licensee Data will be retained by McAfee and all information shall only be used to identify threats and vulnerabilities on Licensee's computer network. Information collected about Licensee's system shall not be released or disclosed to third parties for any reason, (except that such information may be released to Licensor's Affiliates and Authorized Partners as necessary for performance of this Agreement), and shall only be stored in U.S datacenters. The Parties acknowledge that McAfee sells Commercial Off the Shelf products and services, as such term is defined by FAR 2.101, and thus it is exempt under DFARS 204.7304(c) from the applicability of DFARS 252.204-7012. However, given that the Software is configured to collect information that, in whole or in part, might be characterized as Controlled Unclassified Information (CUI), and thus Covered Defense Information (CDI) as defined in DFARS 252.204-7012, and that such CUI/CDI may be stored, processed by, or transmitted using McAfee's internal information systems, McAfee represents that it uses industry best practices to maintain adequate security of such Data, some or all of which are set forth in NIST Special Publication 800-171 "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations."
- 7.14. Licensee Data belongs exclusively to Licensee, regardless of where the Data may reside at any moment in time, including but not limited to Licensor hardware, networks or other infrastructure and facilities where Data may reside, transit through or be stored from time to time. Licensor makes no claim to any right of ownership in Licensee Data. Licensor agrees to keep the Licensee Data confidential in accordance with Section 7.2. Licensor is not permitted to use Licensee Data for any purpose that is not explicitly granted in writing by Licensee. Upon Licensee's request, for any reason whatsoever, Licensor must promptly return all Licensee Data in Licensor's possession in comma separated value (CSV) format or other format as may be designated at the time of the request by Licensee.



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7.15. Unauthorized Obligations. Notwithstanding any statements to the contrary in this Section 7, when any supply or service acquired under this Agreement includes any clause requiring the U.S. Government to automatically renew support or subscription services as defined in Exhibit 4, automatically accept support or subscription services or any other terms and conditions without bilateral agreement or to indemnify Licensor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. § 1341), the following shall govern:

- (i) Any such clause is unenforceable against the U.S. Government.
- (ii) Neither the U.S. Government nor any U.S. Government authorized User shall be deemed to have agreed to such clause by virtue of it appearing in this Agreement. If this Agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the U.S. Government or any U.S. Government authorized User to such clause.
- (iii) Any such clause is deemed to be stricken from this Agreement.

## 8. EXHIBITS

The following Exhibits are attached to this Agreement and incorporated by this reference:

- Exhibit 1, Glossary
- Exhibit 2, McAfee Limited Warranty on Hardware
- Exhibit 3, Professional Services Terms
- Exhibit 4, Technical Support and Maintenance Terms and Conditions

In witness whereof, the parties have executed this Agreement as of the Effective Date.

### McAfee Public Sector LLC

DocuSigned by:  
By:   
180EA79E9C0048F...

Name: Ken Kartsen

Title: Vice President Sales

Date: Oct-25-2017

Address: 2821 Mission College Boulevard,  
Santa Clara, California 95054, USA



DocuSigned by:  
  
62AA9320FE2A488...

### United States Department of Defense:

Digitally signed by  
SEDGWICK.STAC  
IE.L.1230097816  
DN: c=US, o=U.S. Government, ou=DoD,  
ou=PKI, ou=USN,  
cn=SEDGWICK.STAC.IE.L.1230097816  
Date: 2017.11.07 14:22:12 -08'00'

Name: Stacie Sedgwick

Title: Contracting Officer

Date: \_\_\_\_\_

Address: SSC-Pacific, 53560 Hull Street, San  
Diego, CA 92152-5001



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### Exhibit 1, Glossary

1. Definitions. The following definitions shall apply to the Master Agreement.
  - 1.1. "Affiliate" means an entity that controls, is controlled by, or is under common control with, a party to this Agreement, for as long as such ownership or control continues to exist.
  - 1.2. "Authorized Partner" means any of McAfee's distributors, resellers or other business partners that are authorized by McAfee in writing to sell Support or the Software license rights granted under this Agreement.
  - 1.3. "DATs" means detection definition files, also referred to as signature files, that contain the code(s) anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
  - 1.4. "DFARS" means Defense Federal Acquisition Regulation Supplement (DFARS) which provides DoD implementation and supplementation of the Federal Acquisition Regulation (FAR). The DFARS contains requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect on the public.
  - 1.5. "Documentation" means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
  - 1.6. "FAR" means the Federal Acquisition Regulation (FAR), which is the regulation for use by federal executive agencies for acquisition of supplies and services with appropriated funds. The FAR is supplemented by the DoD, the military departments, the Defense Audit Agency (DCAA), the Defense Information Systems Agency (DISA), and the Defense Logistics Agency (DLA). The DoD supplement is called the DFARS (Defense FAR Supplement).
  - 1.7. "Grant Letter" means a confirmation notice letter issued by McAfee to Licensee, confirming the Software and Support purchased by Licensee, including the applicable product entitlement, as defined in the Product Entitlement Definitions set forth at <http://www.mcafee.com/us/resources/legal/mcafee-product-entitlement-definitions.pdf> on the applicable date of the Grant Letter.
  - 1.8. "Hardware" means hardware equipment together with all parts, elements or accessories, and any combination of them, but does not include any Software programs, code, routines or other intangible products (whether pre-loaded or subsequently loaded by Licensee, McAfee, a reseller, or any third party).
  - 1.9. "Intelligence Community" is a coalition of agencies and organizations within federal agencies or services that work separately and together to conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, and is headed by the Director of National Intelligence. The Intelligence Community is comprised of the following: Navy Intelligence, Air Force Intelligence, Army Intelligence, Marine Corps Intelligence, Coast Guard Intelligence, Defense Intelligence Agency, Central Intelligence Agency, Department of Energy, Department of Homeland Security, Department of State, Department of the Treasury,



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Drug Enforcement Administration, Federal Bureau of Investigation, National Security Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency.

- 1.10. "Literal" means a fixed value in source code which can be a number, a character, or a string.
- 1.11. "Professional Services" means services to be provided in accordance with the Professional Services Terms attached as Exhibit 3 to the Agreement.
- 1.12. "Reseller" means an Authorized Partner that is currently certified by McAfee as a McAfee Authorized Reseller with Federal Specialization, and that has agreed to market and resell McAfee products in accordance with the terms of this Agreement.
- 1.13. "Software" means the McAfee software program in object code format (i) licensed from McAfee and purchased from McAfee or its Authorized Partners, or (ii) embedded in or pre-loaded on McAfee-branded Hardware equipment purchased from McAfee or its Authorized Partners, in each case including Upgrades and Updates that Licensee installs during the applicable Support period.
- 1.14. "Support" or "Technical Support" means the support services offered by McAfee for the support and maintenance of the Software and the McAfee-branded Hardware equipment as further specified in the McAfee Technical Support and Maintenance Terms attached as Exhibit 4 to the Agreement.
- 1.15. "Updates" are related to content of the Software, including, without limitation, all DATs, signature sets, policy updates, and database updates for the Software, and that 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.
- 1.16. "Upgrade" means any and all improvements in the Software that are made generally available to McAfee's customer base as part of purchased Support and which are not separately priced or marketed by McAfee.
- 1.17. "User" shall mean the named or specified (by password or other user identification) individuals authorized by Licensee to use the Software in accordance with the terms and conditions of this Agreement, regardless of whether the individual is actively using the Software at any given time. Licensee may replace authorized Users as necessary to reflect personnel changes. Users may include the employees of Licensee or third parties; provided that such third party is limited to use the Software solely in connection with Licensee's internal business operations as conducted by or through such third party. Licensee agrees that it is responsible for ensuring that any usage by its employees and such third parties is in accordance with the terms and conditions of this Agreement.



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### Exhibit 2, McAfee Limited Warranty on Hardware



## McAfee Limited Warranty on Hardware

The following Limited Warranty applies to McAfee, LLC. ("**McAfee**") Hardware products (i) sold by McAfee or a McAfee authorized reseller or distributor and (ii) purchased for Customer's use, and not for resale. The term "**Hardware**" means hardware equipment together with all parts, elements or accessories, and any combination of them, but does not include any Software programs, code, routines or other intangible products (whether pre-loaded or subsequently loaded by Customer, McAfee, a reseller, or any third party). Additional Hardware Services are available from McAfee under a separate Technical Support Addendum. Please contact your McAfee sales representative or authorized distributor or reseller for more information.

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### 1. Warranty Period

- 1.1 McAfee warrants that for a period of and ninety (90) days after the date McAfee initially ships Hardware to Customer ("**Warranty Period**"), the Hardware will be free from material defects ("**Defects**") in workmanship and that it will conform to the McAfee published specifications for the Hardware ("**Specifications**").
- 1.2 THE ABOVE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES WITH REGARD TO THE HARDWARE AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MCAFEE DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF HARDWARE. THESE WARRANTIES GIVE CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO CUSTOMER, IN WHICH CASE SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. Nothing in this Limited Warranty shall exclude or limit any liability which cannot be excluded or limited by applicable law.

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## 2. Warranty Service

- 2.1 To receive warranty service on Hardware, Customer must contact McAfee or its agent. If Customer does not register its Hardware with McAfee, Customer may be required to present proof of purchase.
- 2.2 Hardware products covered under the Warranty will be repaired or replaced with like or better quality at McAfee's sole discretion. For locations where Onsite service is not available McAfee will issue a Return Materials Authorization ("**RMA**") number including shipping information and tracking number. Customer will properly package, insure, and ship prepaid the defective Hardware to the McAfee repair site at Customer expense. Damage or loss of goods during shipment to McAfee is the responsibility of the Customer. McAfee will pay all packing, shipping, and insurance to ship the repaired or replacement Hardware to Customer.
- 2.3 Except as otherwise provided in a separate Technical Support Hardware Program Addendum, the foregoing is Customer's sole and exclusive remedy, and McAfee's sole and exclusive obligation, for defects or failures related to the Hardware.
- 2.4 Prior to returning any Hardware to McAfee for repair or replacement, Customer must obtain an RMA number from McAfee Technical Support. **HARDWARE SENT TO MCAFEE WITHOUT AN RMA NUMBER MAY BE REJECTED BY MCAFEE AND RETURNED TO CUSTOMER AT CUSTOMER'S EXPENSE.** Customer should be prepared to provide McAfee with the location of the Hardware, a detailed description of the problems or errors, a description of the Hardware, including serial number or Service Tag number, and the names and versions of any operating systems and Software loaded on the Hardware, including patches and fixes. McAfee may request that Customer take certain actions to determine whether the problem or error is related to the Software, Hardware, or other item. Customer shall reasonably cooperate with McAfee during this process.
- 2.5 Returned Hardware becomes the property of McAfee at the time it is determined by McAfee to be defective. Customer will own all replacement Hardware provided by McAfee to Customer. Replacement Hardware provided by McAfee will assume the existing warranty of the original Hardware.
- 2.6 Some parts of the Hardware may be designated Customer Replaceable Units ("**CRUs**"). McAfee ships, at McAfee's option and expense, CRUs to Customer for replacement by Customer. Customer must return, at McAfee's expense in the package provided, all defective CRUs to McAfee within fifteen (15) days following its receipt of the replacement CRU or Customer will be invoiced for the CRU at the then-current replacement cost.

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## 3. Limitations on Warranty

- 3.1 This warranty applies only in the country where Customer installs the Hardware. The warranty may not be transferred to another country without the written authorization of McAfee. Customer may not transfer the warranty to a third party without the written authorization of McAfee. Upon a transfer of the Hardware Customer must notify McAfee in writing of the identity of the third party and location of the Hardware within fifteen (15) days after transfer.
- 3.2 This warranty does not cover Defects, damage or failure of Hardware caused by misuse, accident, unauthorized modification, improper use or maintenance, a force majeure event (e.g., earthquake, lightning, flood, fire, etc.), or any other damage or failure caused by a third party or a third party product.
- 3.3 Unless otherwise provided in a separate maintenance agreement with McAfee and except for the warranties specifically described in this Limited Warranty, any technical or other support provided for Hardware, such as phone or website support, is provided "AS-IS" without warranty of any kind.
- 3.4 This warranty is void if product or part identification labels are removed from the Hardware without written authorization from McAfee. Further, this warranty is void if additional Hardware or Software is installed on the Hardware without written authorization from McAfee, or if any



## MASTER AGREEMENT



tampering is detected with the Hardware. This warranty does not apply to any Hardware that is located in an unsuitable operating environment, has been altered, except as authorized by a McAfee Technical Support representative.

3.5 UNDER NO CIRCUMSTANCES IS MCAFEE LIABLE TO CUSTOMER FOR ANY OF THE FOLLOWING:

(A) LOSS OF OR DAMAGE TO RECORDS OR DATA,  
(B) THIRD-PARTY CLAIMS FOR DAMAGES, OR  
(C) CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS OR LOST OPPORTUNITIES), EVEN IF MCAFEE IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. MCAFEE SHALL HAVE NO LIABILITY OR OBLIGATION FOR ANY DAMAGES THAT ARISE FROM THE USE OF HARDWARE AS PART OF OR IN COMBINATION WITH ANY DEVICES, PARTS OR THIRD PARTY PRODUCTS THAT ARE NOT PROVIDED BY MCAFEE AND ARE INCONSISTENT WITH THE DESIGNED PURPOSE OF THE MCAFEE HARDWARE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER.

3.6 MCAFEE WARRANTS THE MATERIAL AND WORKMANSHIP OF ANY PRODUCT PURCHASED FROM MCAFEE THAT WAS NOT MANUFACTURED BY MCAFEE FOR 90 DAYS. THIS IS THE ENTIRE LIMITED WARRANTY ON HARDWARE AND DOES NOT APPLY IN ANY WAY TO ANY SOFTWARE LICENSED BY CUSTOMER. ANY WARRANTY ON SOFTWARE LICENSED BY CUSTOMER IS SET OUT IN THE LICENSE AGREEMENT FOR SUCH SOFTWARE.

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## 4. General Terms

- 4.1 Nothing in this Limited Warranty on Hardware affects any statutory rights of consumers that cannot be waived or limited by contract.
- 4.2 Prior to delivering Hardware to McAfee, Customer shall ensure:
- 4.2.1 The Hardware is free of any legal obligations or restrictions that prevent McAfee from exchanging, repairing or replacing the Hardware.
  - 4.2.2 All necessary consents (e.g., premises owner consent, if applicable) have been obtained to allow McAfee to access, repair, or replace the Hardware.
- 4.3 If McAfee provides any services at Customer's location or facilities, Customer warrants that (a) Customer shall make the Hardware available to McAfee for repair or replacement during McAfee Normal Business Hours, and (b) the premises where the Hardware is located are in a safe condition and that McAfee's personnel will not be subject to undue risk or danger while on the premises.
- 4.4 Notwithstanding any language in the Agreement to the contrary, McAfee may assign this Limited Warranty on Hardware or any obligations hereunder. McAfee will use commercially reasonable efforts to notify Customer of any such assignment.



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### Exhibit 3, Professional Services Terms

## McAfee Professional Service Terms

1. **Agreement Structure.** These Professional Service Terms (“**Terms**”) apply to the services provided by McAfee, including, without limitation, such services performed in relation to McAfee branded products, (“**Services**”). The Services may be set forth in (i) a Statement of Work executed by McAfee and Customer (“**SOW**”) or (ii) other Customer ordering documentation e.g. a purchase order (“**Customer Order**”) applicable to the relevant Services, and as required by McAfee from time to time. For the avoidance of doubt, these Terms do not apply to technical maintenance and support services for McAfee products.
2. **Price, Payment and Performance.** Service fees are specified in the SOW or the Customer Order. Any completion times in the SOW or the Customer Order are only estimates for Customer’s and McAfee’s resource scheduling. Customer will pay all invoices within thirty (30) days of the invoice date without any right to offset, counterclaim, holdback or deduction. In the event of a delay in payment, 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 is received by McAfee. The parties agree that McAfee’s acknowledgement of receipt of the Customer Order shall constitute McAfee’s acceptance of such order. Unless otherwise agreed in writing between the parties, Customer will schedule Services to be performed within one (1) year of the date of the relevant SOW or Customer Order. McAfee may use sub-contractors to perform its contractual obligations under this Agreement, SOW or Customer Order. In the event McAfee uses sub-contractors, McAfee shall be fully responsible for supervising and directing the sub-contractor’s performance.
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 facilities, 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**”). Customer hereby grants to McAfee a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during McAfee’s provision of the Services and the term of a SOW, to use, reproduce, and distribute to McAfee’s subcontractors and agents the Customer IP to the extent necessary to perform the Services and provide the Deliverables as stated in the Agreement. Unless the SOW expressly states otherwise, McAfee owns all patents, copyrights, trademarks, or trade secrets, or any underlying intellectual property rights, including but not limited to materials, work product, know-how, methodologies, processes, techniques, tools, forms, templates, software information, reports, findings discoveries, inventions, designs, copyrightable works, trademarks, trade secrets, formulas, processes, and ideas which are (i) owned or licensed by McAfee or its third party licensors prior to performing the Services; (ii) developed, acquired, conceived, or reduced to practice by McAfee or its agents, during the provision of the Services including without limitation the Deliverables, and (iii) modifications, enhancements and derivative works of the foregoing (“**McAfee Materials**”), and any McAfee Materials that McAfee has embedded or incorporated into a Deliverable. The Agreement does not apply to and Services will not be interpreted as ‘work for hire’. 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 hereby grants to Customer a fully paid-up, limited, non-exclusive, non-assignable, non-transferable, non-sublicensable, perpetual license to use and reproduce, for Customer’s own internal business operations, the Deliverables, under McAfee’s copyrights, trade secrets and Licensed Patent Claims in the form originally furnished by McAfee to Customer. For the purpose of this section, “**Licensed Patent Claims**” means those claims of patents that McAfee owns or has the right to license. 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.
6. **Indemnity.** McAfee will indemnify, and, at its election, defend, Customer against claims asserted against Customer in a suit or action if: (i) the claim is for direct patent infringement or direct copyright infringement, or for McAfee’s trade secret misappropriation and (ii) the claim is (a) asserted against the Services or McAfee Materials alone and not in combination with anything or (b) a combination of the Services or McAfee Materials. Notwithstanding anything else in the Agreement, McAfee will not indemnify or defend Customer for claims asserted in whole or part, against: (x) technology or designs Customer gave to McAfee, (y) modification or programming to the Services, Deliverables, or McAfee Materials by anyone other than McAfee, or (z) the Services, Deliverables or McAfee Materials alleged implementation of some or all of a Standard. McAfee’s obligations under this [Section 6](#) are conditioned on Customer’s prompt written notice to McAfee of a claim, Customer’s agreement to give McAfee sole control over the defense and settlement of the claim, and Customer’s full and timely cooperation including providing 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. 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



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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. 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. For the purpose of this Section 6, "**Standard**" means a technology specification created by a government sponsored group, an industry sponsored group, or any similar group or entity that creates technology specifications to be used by others. Examples of Standards include GSM, LTE, 5G, Wi-Fi, CDMA, MPEG, and HTML. Examples of groups that create Standards include IEEE, ITU, 3GPP, and ETSI.

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 will 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 affiliates and subsidiaries under an obligation of confidentiality no less stringent. McAfee may share Confidential Information with its subcontractors 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 ("Services Warranty"). 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, CUSTOMER AGREES THAT MCAFEE SHALL NOT BE LIABLE FOR ANY ERRORS, OMISSIONS OR INACCURACIES WITH RESPECT TO SUCH INFORMATION.
9. **Exclusive Remedy.** Provided Customer notifies McAfee (in writing and in sufficient detail) of a breach of the Services Warranty within thirty (30) days after provision of the non-conforming Services, McAfee, at its option, will (a) re-perform the Services at no additional cost to Customer, or (b) refund or credit to Customer's account the fees associated with the non-conforming Services. This states Customer's sole and exclusive remedy, and McAfee's sole and exclusive liability, with respect to any breach of warranty relating to the Services. This warranty is personal to Customer and may not be assigned, transferred or passed-through to any third party.
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 gross negligence, willful misconduct or 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 the Agreement by either party, the non-breaching party may cancel the Agreement by giving thirty(30) days' prior written notice thereof; unless the party in breach has cured the breach prior to the expiration of the thirty (30) day period. Any terms which by their nature extend beyond termination will remain in effect until fulfilled. Customer is permitted to reschedule the start date of the Services one time, with at least five (5) business days prior notice, without incurring additional fees. If any additional or alternative rescheduling, suspension, or delays are requested by Customer, and agreed to by McAfee, Customer agrees to pay an additional fee equal to 25% of the applicable fees in each instance where the McAfee accommodates the rescheduled or delayed Services in order to, among others, compensate McAfee for its costs associated with rescheduling. This Agreement may be terminated for convenience upon a 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



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- shall remain effective, due and payable in accordance with the relevant SOW or Customer Order.
- 13. Notice.** Any notice under these Terms or a SOW shall be given in writing.
- 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 such consent will not be required (i) for an assignment or transfer by McAfee to one of its affiliates or (ii) if McAfee or any of its affiliates undergoes a change of control in connection with a merger, acquisition, divestiture, or sale of all or substantially all its assets.
- 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. In addition, McAfee may use, reproduce, and disclose services-related information, data, and material that is anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual person or entity for product or services improvement and other purposes consistent with McAfee's Privacy Notice available at [www.mcafee.com/common/privacy/english](http://www.mcafee.com/common/privacy/english).
- 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 Exhibit A (Territory Table). The parties irrevocably agree that the courts of the relevant country and state or province provided in the Exhibit A 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). The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply to the Agreement.
- 18. Export and Money Laundering.** Customer agrees to comply with all applicable export and import laws and regulations in the use of any Deliverables or 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 these 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. References in these Terms or any SOW to hyperlinked terms are references to the terms or content linked to such hyperlink (or such replacement hyperlink as McAfee may identify from time to time). The content in the hyperlink may be modified from time to time by McAfee and such modifications are not subject to the amendment requirements of this Section 19. Customer acknowledges that the terms or content in the hyperlink are incorporated herein by reference and that it is Customer's responsibility to review the terms or content in the hyperlinks referenced in these Terms or SOW.
- 20. Force Majeure.** Neither party will be liable for delays or failures to perform its obligations under the Agreement to the extent caused by events or circumstances beyond its reasonable control provided such party provides the other party with written notice of such force majeure condition. McAfee's delays or failures to perform are additionally excused to the extent they result from (a) any act or omission of Customer, its employees, agents, users, affiliates, or contractors; (b) any failure or delay by Customer in the performance of a particular task, obligation, or responsibility under the Agreement that is a condition or requirement for a particular McAfee task, obligation, or responsibility; (c) reliance upon instructions, authorizations, approvals, or other information from any representative of Customer; or (d) acts or omissions of third parties (unless directed by McAfee). McAfee will use commercially reasonable efforts to perform and Customer will pay any additional costs and reimburse any additional expenses incurred by McAfee as a result of any Customer delays or failures. 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 Customer:
- (i) Training Services. McAfee shall provide confirmation of the training Services to Customer prior to the start date of the training course. All courses for training Services must be booked by Customer within one (1) year of the date of McAfee's invoice for such training Services otherwise McAfee may, in its sole discretion, cancel all or a portion of the training Services which have not been booked by Customer. Customer agrees that any fees for training Services are not refundable or available for credit or



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exchange, except as expressly agreed to in writing by McAfee.

(i) Training Services Fees. 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 is not liable for any travel or accommodation costs incurred by Customer or any of its attendees to attend the relevant training course. Unless otherwise specified in writing, all training Services shall be provided in the English language.

(ii) Payment. All training Services fees must be received by McAfee at least fourteen (14) days prior to the start date of the relevant training Services course.

(iii) Cancellation.

(a) By Customer. All Customer cancellations for training must be provided to McAfee in writing within fourteen (14) days of the training course start date to avoid penalty fees. If Customer cancels training and notice is received by McAfee less than seven (7) days prior to the training course start date, McAfee will be entitled to the full amount of fees costs and expenses relating to the cancelled training course (including invoicing costs for this amount). If Customer cancels the training and the notice is received by McAfee between seven (7) and fourteen (14) days of the training course start date, McAfee will be entitled to fifty percent (50%) of the fees costs and expenses relating to the cancelled training course.

(b) By McAfee. If training Services fees are not received by McAfee as set forth in Section 21(iii), then McAfee may immediately cancel such training Services course without liability or penalty. If McAfee cancels a training Services course for its convenience, and 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.

(iv) Substitution and Rescheduling. Customer may substitute training course attendees with employees with substantially equivalent qualifications required for participation in the training course at Customer's discretion. McAfee, however, reserves the right to refuse or to limit any training Services if a Customer attendee fails to satisfy the requirements for the relevant training course. 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 Customer. If Customer cannot attend as a result of such changes, Customer may rebook for another available course. McAfee will not be liable for any Customer costs associated with the rescheduling. Customer may reschedule the training course, subject to availability, by providing McAfee with fourteen (14) days prior written notice.

(v) Training Materials. 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 including without limitation as to quality, reliability, timeliness, usefulness, sufficiency and accuracy.

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

**22. Definitions**. Capitalized terms used in these Terms have the meanings assigned below or as otherwise set forth herein:

**"Agreement"** means the Terms and SOW or Customer Order.

**"Customer"** means the entity to which the Services are to be provided.

**"Deliverable(s)"** means any tangible deliverables identified in an applicable SOW to be provided to Customer. **"McAfee"** means 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 Customer is located, or (ii) the McAfee entity as stated in the SOW (if any).

**"Territory"** means the country where Customer is incorporated.



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# McAfee Professional Service Terms

## EXHIBIT A

### Territory Table

Region	Territory	McAfee Entity	Laws and relevant courts
North America	United States, Mexico, Central America, South America, Caribbean	McAfee, LLC.	New York, N.Y., USA
North America	U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States	McAfee Public Sector LLC.	New York City, N.Y., USA
North America	Canada	McAfee Canada ULC	Ontario, Canada

Exhibit 4, Technical Support and Maintenance Terms and Conditions

## MCAfee TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

McAfee will provide Technical Support services in accordance with the following terms and conditions (“**Support Terms**”).

### 1. Definitions.

- 1.1. “**Agreement**” means the Master Agreement to which these Support Terms are attached as Exhibit 4.
- 1.2. “**Authorized Partner**” means any of McAfee’s authorized distributors, resellers or other business partners.
- 1.3. “**Documentation**” means explanatory materials in printed, electronic or online form accompanying the Software in English and other languages, if available.
- 1.4. “**DATs**” means detection definition files, also referred to as signature files, that contain the code(s) anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
- 1.5. “**Grant Letter**” means a confirmation notice letter issued by McAfee to Customer, confirming the Software and Support purchased by Customer, including the applicable product entitlement, as defined in the Product Entitlement Definitions.
- 1.6. “**Grant Number**” means a unique number communicated by McAfee in a Grant Letter confirming Customer’s Support entitlement and is required when accessing Support.
- 1.7. “**High Risk System**” is defined in Section 3.1.5.1 of the Agreement.
- 1.8. “**Software**” means the McAfee software program in object code format (i) licensed from McAfee and purchased from McAfee or its Authorized Partners, or (ii) embedded in or pre-loaded on McAfee hardware equipment purchased from McAfee or its Authorized Partners, in each case including Upgrades and Updates that Customer installs during the applicable Support period.
- 1.9. “**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” includes “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.” Examples of Standards include GSM, GPRS, EDGE, CDMA, UMTS, LTE, WCDMA, WiFi (also known as 802.11[x]), Bluetooth (also known as 802.15.1), and de-facto standards such as HTML or VHS (video). Examples of entities that promulgate, distribute, specify or publish Standards include the IEEE, ITU, 3GPP, ETSI, and the USB Implementers’ Forum.
- 1.10. “**Support**” or “**Technical Support**” means the support services offered by McAfee for the support and maintenance of the Software and the McAfee- hardware equipment as further specified in the McAfee Technical Support and Maintenance Terms.
- 1.11. “**Support Period**” means the effective time period for which the Customer has purchased Support that is confirmed in a Grant Letter.
- 1.12. “**Support Level(s)**” means the McAfee Support offering purchased by Customer. Software and Hardware Support Levels are defined on datasheets available at: <http://www.mcafee.com/us/support/support-benefits.aspx>
- 1.13. “**Updates**” are related to content of the Product and include without limitation all DATs, signature sets, policy updates, and database updates for the Products 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.
- 1.14. “**Upgrade**” means any and all improvements in the Products 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.

2. **Provision of Support.** McAfee will provide Support to Customer during the Support Period at the Support Level that has been purchased by Customer and is confirmed to Customer in a Grant Letter or in the case of Cloud Product<sup>1</sup>, based on the initial order or renewal. Customer will not be entitled to receive Support outside of the Support Period.
3. **Updates and Upgrades.** McAfee grants to Customer a non-exclusive, non-transferable license to use Upgrades and Updates provided by McAfee during the Support Period as a part of purchased Support. Such Upgrades and Updates are subject to the terms of the license granted by McAfee to the Customer for the Software. With the exception of Cloud Product, (a) Customer shall promptly download, distribute and install all Updates as released by McAfee during the Support Period and (b) McAfee strongly suggests that Customer also downloads, distributes and installs all Upgrades as released by McAfee during the Support Period. Customer acknowledges that any failure to do so could result in Customer's inability to receive Updates and Technical Support and therefore could cause major security risks. An Upgrade may require a hardware upgrade or new platform conversion to function properly.
4. **Supported Versions and End of Life.** The provision of Support is limited to (a) the current version and (b) the immediately preceding version of the Product. Only the current version of Cloud Products will be supported. Notwithstanding any of the foregoing, Support is subject to McAfee's End-of-Life Policy attached hereto. It is Customer's responsibility to review McAfee's Product Support Lifecycle webpage at: [http://www.mcafee.com/us/enterprise/support/customer\\_service/end\\_life.html](http://www.mcafee.com/us/enterprise/support/customer_service/end_life.html) to determine whether a Product qualifies for Support. Furthermore, Customer proactive Support notifications can be accessed by subscribing to McAfee Support Notification Service (SNS) available at <http://sns.snssecure.mcafee.com>.
5. **Response Times.** McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <https://support.mcafee.com/SPR/WebContent/ProgramsAndPolicies/faq-corporate-technical-support.pdf>. Access to McAfee's websites for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors.
6. **Bug Fixing and Remote Diagnostics.** McAfee uses commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With Customer's prior authorization, McAfee may perform remote diagnostics to work on reported problems. In the event Customer declines remote diagnostics, McAfee and Customer may agree to on-site Technical Support which is subject to an additional fee and reasonable travel and expenses, which the customer is responsible for.
7. **Support Period and Expired Support.** The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. In the event the Software or Hardware Support expires, any reinstatement of Support must be purchased to cover the lapsed Support since expiration and be renewed until the Support is current. Support must be purchased within one (1) year after expiration of the previous Support Period.
8. **Support Coverage.** Support is sold based upon the quantity of all Products purchased by Customer. Upon purchasing Support for a Product, Customer must purchase the same Support Level for all Product units owned or licensed by Customer that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Customer on a per-product family basis and are sold per Support Region.
9. **Acquired Company Products.** From time to time McAfee may acquire other companies and continue to support the products licensed by such companies ("Acquired Products"). The Support Level(s) defined herein

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<sup>1</sup> Services for "cloud computing" as defined by DFARS 239.7601 are not authorized for sale under this Agreement.

may not be applicable to the Acquired Products at the time of the acquisition but McAfee may within a reasonable period of time after the acquisition provide a description of the Support Level(s) available for the Acquired Products, which will become applicable once published on the Support webpage.

10. **Exclusions.** McAfee has no obligations to, (a) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (b) provide Support for Hardware damaged by or Hardware failures caused by Customer (c) import or export customer data, create or modify custom businessrules or reports, or support custom modifications to databases, active server pages, or other code, components or programs (d) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published McAfee specifications or (e) provide Cloud Product Support for issues arising from any violation of the Cloud Product Terms and Conditions.

**11. Obligations of Customer.**

- 11.1. **Support Process:** Customer must report Software or Hardware Product problems to McAfee Support organization, and be prepared to provide McAfee with (i) the Grant Number, (ii) the location of the Product, (iii) a detailed description of the problem, (iv) a description of the hardware on which the Software is loaded, including any serial number or service tag number where applicable, and (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. Customer must report Cloud Product problems to McAfee Support organization, and be prepared to provide McAfee with (i) technical contact information and (ii) a detailed description of the problem. McAfee may request that Customer takes certain actions to determine whether the problem or error is related to the Product, or another item. Customer must reasonably cooperate with McAfee during this process.
- 11.2. **Access:** Customer shall provide McAfee with sufficient, free and safe access to the Products, Customer's computer systems networks and facilities in the event that it is agreed that McAfee will provide on-site support at Customer's location or facilities or that McAfee will perform remote diagnostics. McAfee will conform to Customer's security requirements before gaining access to Customer's facilities, provided such requirements are issued in writing to McAfee reasonably prior to accessing such facilities.
- 11.3. **Backup and Restore:** Customer must keep adequate backup copies of data, databases, and application programs and agrees that Customer is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.

12. **Termination.** Any terms which by their nature extend beyond the termination of this agreement remain in effect until fulfilled.

**13. Hardware specific terms.**

- 13.1. **Region and Geographic Limitations:** Unless otherwise agreed in writing by McAfee or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Customer originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <http://www.mcafee.com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf> (provided for informational purposes only)
- 13.2. **Hardware Return:** Prior to returning any Hardware to McAfee for repair or replacement, Customer must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Customer proprietary or confidential information that prevent McAfee from exchanging, repairing or replacing the Hardware, (ii) Customer has obtained a return authorization from McAfee, including a return material authorization number (a "**RMA Number**"). Hardware returned to McAfee becomes the property of McAfee at the time it is received by McAfee and Customer shall assume ownership of all replacement Hardware provided by McAfee to Customer upon shipment by McAfee.
- 13.3. **Restrictions:** Customer must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from McAfee. Customer

must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from McAfee or breach any tamper seal on the Hardware.

- 13.4. Inspection Period: McAfee reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents and to request Customer to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.

**14. Resident Support Account Manager Terms.**

- 14.1. If Customer purchases a Resident Support Account Manager (“**RSAM**”), McAfee will provide an RSAM to provide on-site Support that Customer has acquired from McAfee. Additional information on the description and scope of the RSAM’s roles and responsibilities can be found at <http://www.mcafee.com/us/support/support-benefits.aspx>.
- 14.2. The RSAM will work during normal business hours as agreed upon between McAfee and Customer. The RSAM may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the RSAM’s employment with McAfee end, McAfee will provide to Customer the name and phone number of a temporary Support Account Manager (“**SAM**”) that will cover Customer’s account until the RSAM returns. The temporary SAM will provide Support services remotely.
- 14.3. Customer acknowledges and understands that the timeline to on-board at Customer’s location is approximately ninety (90) days from the time of the notification of the requirement. During this 90-day period, McAfee will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RSAM. McAfee and Customer will work together in good faith to select the RSAM. In the event Customer rejects the candidate or delays in the selection of a reasonable candidate McAfee has offered for consideration, McAfee will assign an interim SAM. For avoidance of doubt, the interim SAM will not be an on-site resource and may be a shared resource with other McAfee customers.
- 14.4. Customer acknowledges that McAfee employees are quickly deployed, and any delay in the selection of a candidate may: (1) result in Customer not being able to have its desired individual perform the Support services;
- (2) result in the use of an interim SAM (as stated above); and (3) hinder the performance of the Support services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the duration of the term of the Support Period. No fees will be refunded or credits given for the period that an interim SAM is used.

- 15. Warranty.** MCAFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY, AND MCAFEE’S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. MCAFEE SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF CUSTOMER PROVIDES WRITTEN NOTICE OF THE BREACH TO MCAFEE WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS CUSTOMER’S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, CONFORMITY TO ANY REPRESENTATION, SKILL AND CARE. MCAFEE DOES NOT WARRANT OR GUARANTEE THAT SUPPORT WILL BE FREE FROM ERRORS OR DEFECTS OR THAT THE SUPPORT WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to Customer. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY).

16. **Limitation of Liability; Confidentiality; Audit; Export Control.** Customer agrees to these Technical Support and Maintenance Terms and Conditions as part of one or more product licenses or services agreements between McAfee and the Customer (“**Underlying Agreement**”). THE LIMITATION OF LIABILITY, CONFIDENTIALITY, AUDIT AND EXPORT CONTROL PROVISIONS OF THE RELEVANT UNDERLYING AGREEMENT ARE INCORPORATED INTO THESE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.

17. **General.**

- 17.1. **Recording:** In providing Support, McAfee may record all or part of telephone calls between Customer and McAfee for quality assurance and training purposes in compliance with applicable laws.
- 17.2. **Assignment:** The provision of Support is not assignable by Customer without the prior written consent of McAfee. Any attempt of assignment by Customer without such consent will be void. McAfee may subcontract its obligations to provide Support hereunder to another party but with notice to the Customer.
- 17.3. **Governing law:** All disputes arising out of or relating to this Agreement or its subject matter will be governed by the Federal Laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply.

18. **Entire Agreement.** The Support Terms and any additional terms referenced herein constitute the entire agreement between Customer and McAfee with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof. The Support Terms may not be modified except by a written addendum agreed to by McAfee and Customer.

## EXHIBIT A to Exhibit 4

### Support

1. **Provision of Support.** Licensor (“we,” “us,” “our”) will provide the support services set forth in this Exhibit (“Support”) to Customer (“you,” “your”) during the Support Period at the Support Level you bought, as confirmed in your Grant Letter. You are not entitled to receive Support outside the Support Period.
  
2. **Updates and Upgrades.**
  - 2.1 **License.** We grant you a nonexclusive, nontransferable license to use the Updates and Upgrades we may provide during the Support Period as a part of purchased Support. Updates and Upgrades are subject to the license that we have granted to you for the Software.
  
  - 2.2 **Compatibility.** An Upgrade may require a hardware upgrade or new-platform conversion to function properly.
  
  - 2.3 **Your Duties.** You should promptly download, distribute, and install all Updates or Upgrades as we release them during the Support Period. Your failure to download, distribute, or install the Updates or Upgrades may result in your inability to receive further Updates or Upgrades and Support, and may cause you major security risks.
  
3. **Supported Versions and End of Life.**
  - 3.1 **Limitations and Policy.** Our provision of Support is limited to the current version and the immediately preceding version of the Product. All Support is subject to our End-of-Life Policy available at <http://www.mcafee.com/us/resources/misc/support-policy-product-support-eol.pdf>.
  
  - 3.2 **Further Information and Notifications.** To determine whether a Product qualifies for Support, it is your responsibility to review and remain apprised of our Product Support Lifecycle webpage at <http://www.mcafee.com/us/support/support-eol.aspx>. Furthermore, customer-proactive Support notifications can be accessed by subscribing to Licensor Support Notification Service (SNS) available at [https://sns.snssecure.mcafee.com/content/Subscription\\_Center](https://sns.snssecure.mcafee.com/content/Subscription_Center).

4. **Response Times.** We will endeavor to meet the response times set forth in the escalation and response charters listed under <https://support.mcafee.com/SPR/WebContent/ProgramsAndPolicies/faq-corporate-technical-support.pdf>. Access to our websites for the provision of Support may be suspended for brief periods because of scheduled maintenance and other factors.
  
5. **Bug Fixing and Remote Diagnostics.** We will endeavor to provide work-around solutions or patches to reported Product problems. We may sometimes have to perform remote diagnostics to work on reported problems. If you decline remote diagnostics, we may not be able to provide you with Support services. But you and we may agree to on-site Support, subject to an additional fee including reasonable travel and other expenses.
  
6. **Support Period and Expired Support.**
  - 6.1 **Beginning of Period.** The Support Period begins on the date the Product was purchased and continues as long as you renew the Support Period without interruption.
  
  - 6.2 **Expired or Lapsed Period.** If you let Support expire or lapse but later want to reinstate Support, you must pay both an out-of-compliance fee and the then-current Support fee for the Product for the period during which there was no Support.
  
  - 6.3 **Support Unavailable.** In no event is reinstatement of Support available for a Product for which Support has lapsed longer than one year.
  
7. **Support Coverage.** Support is sold based on the quantity of all Products you purchase. When you purchase Support for a Product, you must purchase the same Support Level for all Product units you own or license that are in use at any location covered by Support. Some Support Levels are available for your purchase on a per-product-family basis. Those are sold by Support Region.
  
8. **Acquired-Company Products.** From time to time, we may acquire other companies and continue to support the products licensed by those companies. The Support Levels defined here may not apply to those products at the time of the acquisition, but we may within a reasonable time after the acquisition provide a description of any Support Levels available for them. That Support will become applicable once it is published on our Support website.
  
9. **Exclusions.**

- 9.1 **Modified Product.** We do not provide Support if hardware, tools, or software other than those supplied or approved by us have been incorporated with the Product.
- 9.2 **Hardware Damage and Failures.** We do not provide Support for Hardware that you have damaged or for Hardware failures that you have caused.
- 9.3 **Data, Programs, and the Like.** We're not obligated to import or export customer data; to create or modify custom business rules or reports; or to support custom modifications to databases, active server pages, or other code, components, or programs.
- 9.4 **Irreproducible Problems.** We do not provide Support for problems that cannot be reproduced in running the Product in a configuration that meets published Licensor specifications.

## 10. Your Obligations.

- 10.1 **Support Process.** You must report Product problems to our Support organization and be prepared to provide us with the Grant Number, the location of the Product, a detailed description of the problem, a description of the hardware on which the Software is loaded (including any serial number or service-tag number, where applicable), and the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes. We may ask you to take certain actions to determine whether the problem or error is related to the Product or to another item. You must reasonably cooperate with us during this process.
- 10.2 **Access.** You must give us sufficient, free, and safe access to the Product and your computer systems, networks, and facilities if you and we agree that we will provide on-site support at your location or facilities, or that we will perform remote diagnostics.
- 10.3 **Backup and Restore.** You must keep adequate backup copies of data, databases, and application programs. You are solely responsible for any restoration or reconstruction of lost or altered files, data, and programs.

- 11. **Termination.** We may immediately terminate Support without any further obligation to you if you tamper with or modify the Product without our prior written authorization, or otherwise use the Product in violation of the applicable agreement or of these Support terms. Any terms that by their nature extend beyond the termination will remain in effect until fulfilled.

## 12. Warranty.

- 12.1 **Performance of Support.** We warrant that our Support will be performed in a professional and workmanlike manner.
- 12.2 **Remedy and Liability for Breach.** For any breach of this warranty, your sole remedy, and our entire liability, will be repeated performance of the nonconforming support. We are not liable for a breach of warranty unless you give us written notice of the breach within 30 days after the applicable support is performed.
- 12.3 **Exclusive Warranty. This is your only warranty. It replaces any other warranty, express or implied, including warranties of merchantability, satisfactory quality, fitness for a particular purpose, title, non-infringement, skill, and care.**
- 12.4 **Disclaimer. We do not warrant that the Support will protect against all possible threats. This disclaimer does not apply to you in jurisdictions that do not allow the exclusion of express or implied warranties. In that event, any express or implied warranty is limited in duration to any minimum period required by the applicable law.**

## 13. Hardware-Specific Terms.

- 13.1 **Regional and Geographic Limitations.** Unless we otherwise agree in writing or include as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where you originally installed it. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <http://www.mcafee.com/us/resources/misc/rm-dell-hw-by-country-external-1105.pdf>.
- 13.2 **Hardware Return and Replacement.** Hardware returned to us becomes our property when we receive it. You assume ownership of all replacement Hardware that we provide as soon as we ship it to you. Before you return any Hardware to us for repair or replacement, you must ensure that:
- (A) the Hardware is free of any legal obligations or restrictions and of any of your proprietary or confidential information that would prevent us from exchanging, repairing, or replacing the Hardware; and

(B) you have obtained a return authorization from us, including a return-material authorization number (an "RMA Number").

13.3 **Restrictions.** Without our written authorization, you must not — and you must not let anyone else — do any of the following:

(A) remove, alter, or obscure any proprietary notices or instructional labels on the Hardware;

(B) install additional hardware or software on the Hardware; or

(C) breach any tamper seal on the Hardware.

13.4 **Inspection Period.** We or our agents may inspect Hardware for which Support has lapsed for more than 90 days. We may charge a separate fee for the inspection. At our request, you must install the most current Upgrades and Updates before we agree to renew Support for the Hardware.

#### 14. General.

14.1 **Recording.** In providing Support, we may record all or part of telephone calls between you and us for quality-assurance and training purposes in compliance with applicable laws.

14.2 **Third-Party Subcontractors.** We may subcontract to a third party our obligations to provide Support. Such a subcontract does not constitute an assignment.

14.3 **"Including."** Unless the context requires otherwise, the term "including" means "including but not limited to."

14.4 **Resident Support Account Manager Terms.**

(A) If Customer purchases a Resident Support Account Manager ("RSAM"), we will provide an RSAM to provide on-site Support that you have acquired from us. Additional information on the description and scope of the RSAM's roles and responsibilities can be found at <http://www.mcafee.com/us/support/support-benefits.aspx>.

- (B) The RSAM will work during normal business hours as agreed upon between the parties. The RSAM may be required to be out-of-the office due to paid time off, illness, holidays, vacations or meetings. During this time, out-of-the-office, or should the RSAM's employment with us end, you will be provided the name and telephone number of a temporary Support Account Manager ("SAM") that will cover your account until the RSAM returns. The temporary SAM will provide Support services remotely.
  
- (C) You acknowledge and understand that the timeline to on-board at your location is approximately ninety (90) days from the time of the notification of the requirement. During this 90-day period, we will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RSAM. The parties will work together in good faith to select the RSAM. In the event you reject the candidate or delay in the selection of a candidate we have offered for consideration, we will assign an interim SAM. For avoidance of doubt, the interim SAM will not be an on-site resource and may be a shared resource with other Licensor customers.
  
- (D) You acknowledge that our employees are quickly deployed, and any delay in the selection of a candidate may: (1) result in you not being able to have your desired individual perform the Support services; (2) result in the use of an interim SAM (as stated above); and (3) hinder the performance of the Support services as described herein. You also acknowledge that it might not be possible to retain a particular individual for the duration of the term of the Support Period. No fees will be refunded nor credits given for the period that an interim SAM is used.

**15. Definitions.**

- 15.1 "Grant Letter" means a confirmation-notice letter we issue electronically to you confirming your Software and Support purchase, including the applicable product entitlement, as defined in the Product Entitlement Definitions set forth (on the date of your Grant Letter) at <http://www.mcafee.com/us/resources/legal/mcafee-product-entitlement-definitions.pdf>, and containing download details.
  
- 15.2 "Grant Number" means a unique number communicated by us in a Grant Letter confirming your Support entitlement and is required when accessing Support.
  
- 15.3 "Hardware" means MCAFEE branded hardware equipment but excludes any Software or other intangible products.
  
  
- 15.5 "Product" means our Software or Hardware product specified in a Grant Letter.

15.6 "Software" means each Licensor software program in object-code format licensed by and purchased from us or our Authorized Partners, including Upgrades.

15.7 "Support Level" means the Licensor Support offering you purchased. Software and Hardware Support Levels are defined on datasheets available at <http://www.mcafee.com/us/support/support-benefits.aspx>.

15.8 "Support Period" means the effective time period for which you have purchased Support that is confirmed in a Grant Letter.

15.9 "Support Region" means any one of the following five regions: (1) North America; (2) Europe, the Middle East, and Africa; (3) Asia-Pacific; (4) Japan; and (5) Latin America.

15.10 "Updates" are related to content, including all DATs, signature sets, policy updates, and database updates for the Product, that are made generally available to our customer base as a part of purchased Support and that are not separately priced or marketed by us.

15.11 "Upgrade" means any and all improvements in the Software that we make generally available to our customer base as a part of purchased Support and that are not separately priced or marketed by us.