

McAfee Enterprise Professional Service Agreement

This Professional Service Agreement (**Agreement**) governs the provisioning of Services by McAfee Enterprise (“**Supplier**”) to **Customer**. By executing a Statement of Work (“SOW”) or placing an Order for Services, Customer agrees to the terms and conditions in this Agreement. If Customer does not agree to this Agreement, Customer may not receive Services. If Customer is accepting this Agreement on behalf of another person or other legal entity, Customer represents and warrants that Customer has full authority to bind that person or legal entity to this Agreement.

Capitalized terms used in this Agreement have the meaning assigned to them in **Attachment 1**.

1. **SCHEDULING AND PERFORMANCE OF THE SERVICES.**

- 1.1. The Services are to be specified in a SOW, a Service Order, or other transaction document executed by the Parties.
- 1.2. Supplier may use subcontractors to perform the Services, and in such case, Supplier remains fully responsible for supervising and directing subcontractors’ performance.
- 1.3. The Parties will agree on a start date for the Services, which in no event will be later than six (6) months from the Service Order Date.
- 1.4. Any completion times identified in the SOW or the Service Order are only estimates for each Party’s resource scheduling purposes. Unless the Parties otherwise agree in writing, Supplier will perform the Services within one (1) year of the Service Order Date. Customer acknowledges and agrees that if Supplier has not completed the Services within one (1) year of the Service Order Date for reasons that are not attributable to Supplier, Supplier may, at its sole discretion, cancel the unperformed Services and retain any pre-paid fees for the unperformed Services.
- 1.5. Customer is permitted to reschedule the start date of the Services one time, with at least five (5) Business Days’ prior written notice, without incurring additional fees. If Customer requests, and Supplier agrees to, any additional or alternative rescheduling, suspension or delays, Customer will pay an additional fee equal to twenty-five percent (25%) of the applicable fees in each instance where Supplier accommodates the rescheduled or delayed Services.

2. **ACCESS.** As applicable to the Services to be performed, Customer will provide Supplier with sufficient, free, safe and timely access to Customer’s facilities, computer systems and networks to enable Supplier’s performance of the Services.

3. **TERMINATION.**

- 3.1. **Termination for cause:** Upon written notice to the other party, either party may terminate this Agreement immediately for cause as provided in this Agreement, or if:
 - (a) the other party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a written notice from the first party specifying the breach and requiring it to be remedied (except for non-payment in which the cure period is ten (10) days); or
 - (b) the breach is incapable of remedy; or
 - (c) to the extent permitted under applicable law:

- i. the other party or its property is subject to insolvency or receivership procedures;
 - ii. the other party becomes insolvent or unable to pay its debts as they mature;
 - iii. the other party makes an assignment for the benefit of creditors; or
 - iv. the other party becomes the subject of any other proceeding under any bankruptcy, insolvency or debtor's relief law.
- 3.2. **Suspension of performance:** Supplier may immediately suspend performance under this Agreement if Customer, in Supplier's reasonable opinion, fails to comply with this Agreement.
- 3.3. **Effect of termination:** Except for termination for cause due to Supplier, all Orders for Services placed by Customer and accepted by Supplier before the Agreement ends will remain effective, due and payable in accordance with the relevant SOW or Order, regardless of whether the Services have been performed.
- 4. **INSURANCE.** Each party must maintain insurance with coverage at least equal to what a prudent company would carry under similar circumstances or as required by law, and will provide details of its insurance coverage upon request.
- 5. **PAYMENT.**
- 5.1. **If Customer is purchasing the Services through an Authorized Partner,** the payment and tax obligations will be exclusively as between the Authorized Partner and Customer, and the terms in Sections 6.1 and 6.2 below ("Taxes") will not apply as between Supplier and Customer.
- 5.2. **If Customer is purchasing the Services directly from Supplier,** Customer will pay Supplier all fees within thirty (30) days of the invoice date without any right to offset, counterclaim, holdback or deduction. Supplier reserves the right to charge interest for late payments on the unpaid amounts calculated at the lesser of (a) 1.5% interest per month; or (b) the highest interest rate allowed by relevant law, accrued and compounded from the date due until payment is received by Supplier.
- 6. **TAXES.**
- 6.1 **Transaction Taxes.**
 - (a) If Customer purchases the Services directly from Supplier, Customer will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Customer under this Agreement (**Transaction Taxes**).
 - (b) Supplier will separately state on its invoices the Transaction Taxes that Supplier is required to collect from Customer under applicable law. Customer will provide proof of any exemption from Transaction Taxes to Supplier at least fifteen (15) Business Days before the due date for paying an invoice.
 - (c) If Supplier does not collect the required Transaction Taxes from Customer, but is subsequently required to remit the Transaction Taxes to any taxing authority, Customer will promptly reimburse Supplier for the Transaction Taxes, including

any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of Supplier.

6.2 **Withholding Taxes:**

- (a) All payments due from Customer will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority.
- (b) If Customer is required by applicable law to deduct or withhold income taxes from amounts payable to Supplier under this Agreement (**Withholding Taxes**), Customer will remit, and provide Supplier with evidence that Customer has remitted, the Withholding Taxes to the appropriate taxing authority and pay to Supplier the remaining net amount.
- (c) Customer will provide written notice to Supplier of its intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with Supplier to reduce any Withholding Taxes.
- (d) If Supplier provides Customer with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Customer will apply the lower rate.

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

7. **CONFIDENTIALITY.**

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

7.2 Each Recipient of Confidential Information under this Agreement must:

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

- 7.3 Notwithstanding the restrictions set out above, if the Recipient is required to disclose any of the Disclosing Party's Confidential Information by law, such as in response to a subpoena or requirement of any court, arbitral, administrative, or legislative body, the Recipient must:
- (a) where reasonably possible and permitted, immediately provide written notice to the Disclosing Party of the required disclosure to give the Disclosing Party an opportunity to move for a protective order or otherwise prevent the disclosure;
 - (b) disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
 - (c) assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.
- 7.4 Customer will immediately notify Supplier if Confidential Information of Supplier is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threatens to violate the terms of this section, either party is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.
- 7.5 Upon the Disclosing Party's request and upon termination of this Agreement (unless agreed otherwise by the Parties at the time), each party will return, destroy or delete permanently (at the Disclosing Party's election) the other party's Confidential Information.
- 7.6 On termination of this Agreement, the Recipient must continue to keep the Disclosing Party's Confidential Information confidential for five (5) years in accordance with this section.
- 7.7 **Feedback:** Customer agrees that Supplier has the unrestricted right to use suggestions and feedback provided by Customer regarding the Services and other products and services of Supplier and its Affiliates, without notice to, payment to or consent from Customer, and that such suggestions and feedback will be the Confidential Information of Supplier, and not Customer.

8. **INTELLECTUAL PROPERTY RIGHTS.**

- 8.1. As between the Parties, (a) Customer owns all rights, title, and interest in and to any proprietary information, materials, or other items provided by Customer to Supplier under an applicable SOW (**Customer IP**) and all Intellectual Property Rights therein; and (b) Supplier owns all rights, title, and interest in and to all Supplier Materials and Deliverables, including all Intellectual Property Rights therein. The Services will not be interpreted as a "work for hire." Customer may not exercise any rights, title, and interest in and to the Services, Supplier Materials, Deliverables, or any related Intellectual Property Rights, except for the limited usage rights granted to Customer in this Agreement.
- 8.2 Subject to this Agreement, including the payment of fees:
- (a) Supplier 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 (and any Supplier Materials solely as provided by Supplier as part of the Deliverables); and

- (b) Customer grants to Supplier a fully paid-up, non-exclusive, non-assignable, non-transferable, non-sublicensable license, during the term of any applicable SOW, to use, reproduce, and distribute to Supplier’s Representatives Customer IP to perform the Services and provide the Deliverables under the Agreement.

9. **WARRANTIES, EXCLUSIONS, DISCLAIMERS.**

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

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

9.3 **Disclaimer of Warranties:** EXCEPT FOR THE SERVICES WARRANTY, THE SERVICES ARE PROVIDED “AS IS” TO THE EXTENT PERMITTED BY LAW, AND MCAFEE DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES WITHOUT LIMITATION, INCLUDING QUALITY, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT; OR THAT MCAFEE WILL FIND ANY AND ALL VULNERABILITIES.

10. **LIMITATION OF LIABILITY.**

10.1 **LIMITATION ON DIRECT DAMAGES.** EACH PARTY’S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID OR PAYABLE TO MCAFEE FOR THE SERVICES FROM WHICH THE CLAIM AROSE. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE.

10.2 **DISCLAIMER OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORSEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE.

10.3 **LIMITATION OF LIABILITY EXCLUSIONS.** THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 WILL NOT APPLY TO: (A) CUSTOMER'S VIOLATION OF SUPPLIER'S INTELLECTUAL PROPERTY RIGHTS OR CUSTOMER'S USE OF DELIVERABLES IN A MANNER NOT EXPRESSLY AUTHORIZED BY SUPPLIER IN A SOW; (B) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 11; (C) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN SECTION 7; CUSTOMER'S PAYMENT OBLIGATIONS UNDER A SOW; (D) EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; OR (E) ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

11. **INDEMNIFICATION.**

11.1. **Customer indemnification obligations:** Unless prohibited by law, Customer will unconditionally indemnify, and defend Supplier, its Affiliates, and their officers, directors, employees, contractors and agents (each a **Supplier Indemnified Party**) against any claims, liabilities and expenses (including court costs and reasonable attorneys' fees) that a Supplier Indemnified Party incurs as a result of or in connection with:

- (a) any third-party claims arising from:
 - (i) Customer's failure to obtain any consent, authorization or license required for Supplier's use of data, software, materials, systems, networks or other technology provided by Customer under the Agreement;
 - (ii) Customer's use of the Services in a manner not expressly permitted by the Agreement;
 - (iii) Supplier's compliance with any technology, designs, instructions or requirements provided by Customer or a third party on Customer's behalf;
 - (iv) any claims, costs, damages and liabilities whatsoever asserted by any Customer Representative; or
 - (v) any violation by Customer of applicable laws or regulations; and
- (b) any reasonable costs and attorneys' fees required for Supplier to respond to a subpoena, court order or other official government inquiry regarding Customer's use of the Services.

11.2. **Supplier's Intellectual Property Indemnification.**

- (a) Supplier will indemnify Customer and, at Supplier's election, defend Customer against a third-party claim asserted against Customer in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for Supplier's trade secret misappropriation and the claim is asserted against the Services or the Deliverables alone and not in combination with anything else, or solely a combination of the Services or Deliverables.
- (b) **Exclusions:** Notwithstanding anything to the contrary in this Agreement, Supplier will not indemnify or defend Customer for claims asserted, in whole or in part, against or resulting from:
 - (i) technology, designs, instructions or requirements provided by Customer or

- a third party on Customer's behalf;
 - (ii) modifications or programming to the Services or Deliverables that were made by anyone other than Supplier; or
 - (i) the Services' or Deliverables' alleged implementation of some or all of a Standard.
- (c) **Remedies:** Supplier may, in its sole discretion and at its own expense, with respect to any Services or Deliverables that are subject to a claim:
- (i) procure Customer with the right to continue using the affected Services or Deliverables;
 - (ii) replace the affected Services or Deliverables with non-infringing Services or Deliverables;
 - (iii) modify the affected Services or Deliverables so they are non-infringing; or
 - (iv) terminate the provision of the Services and, if the fees were paid in advance, refund the residual value of the fees paid by Customer for the affected Services, depreciated using a straight-line method of depreciation over a three (3) year period from the date of provision of the affected Services.

11.3. **Indemnification procedure:** The indemnified party (**Indemnitee**) will:

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

11.4. **Personal and exclusive indemnity:** The foregoing indemnities are personal to the Parties and may not be transferred to anyone. This states the Parties' entire indemnification obligations, and Customer's exclusive remedy for claims involving infringement of Intellectual Property Rights.

12. **PRIVACY AND USE OF DATA.**

- 12.1. Each party shall comply with applicable laws governing the collection, use and disclosure of Personal Data and must obtain consents required with respect to the handling of Personal Data.
- 12.2. Unless a specific agreement has been executed between the Parties, by agreeing to a SOW or submitting an Order, the Parties are deemed to have executed the Supplier's Data Processing Agreement ("DPA"). In the event of any conflict between the terms of the DPA and this Agreement, the terms of the DPA will take precedence.

- 12.3. Customer grants Supplier a non-exclusive, perpetual right and license to use, reproduce and disclose Threat Data and deidentified material for improvement of products and services; research to enhance understanding of Malware, threats, and vulnerabilities; and to improve overall security. This includes without limitation compiling statistical and performance information and making such information publicly available. Supplier retains all rights in Threat Data and aggregated and anonymous data.
- 12.4. Products, Services, software, hardware, appliances or support may employ applications and tools to collect Customer Data. Such collection of Customer Data may be necessary to provide Customer with the relevant Services. Customer may be required to uninstall, disable or cease using Services to stop further Customer Data collection.
- 12.5. Customer will, in its use of the Services and Deliverables, comply with its obligations under privacy regulations in respect of its processing of Personal Data and any processing instructions it issues to Supplier. Customer represents that it has all rights, permissions and authorizations necessary for Supplier to process Personal Data under this Agreement. Customer agrees that this Agreement is its complete and final instruction to Supplier in relation to the processing of Personal Data.

13. **COMPLIANCE WITH LAWS.**

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

14. **TRAINING SERVICES.** Additional terms pertaining to Supplier's Training Services are set forth in **Attachment 2** to this Agreement.

15. **GENERAL PROVISIONS**

- 15.1. **Relationship:** The Parties are independent contractors under this Agreement and expressly disclaim any partnership, franchise, joint venture, agency, employer/employee, fiduciary or other special relationship. Neither party intends this Agreement to benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties and listed Affiliates. This Agreement is not intended to create a third-party beneficiary of any kind. Customer must not represent to any third party that it has any right to bind Supplier in any manner and Customer will not to make any representations or warranties on behalf of Supplier.
- 15.2. **Severability:** If a court holds that any provision of this Agreement is invalid or unenforceable under applicable law, the court will modify the provision to the minimum extent necessary to make it valid and enforceable or, if it cannot be made valid and enforceable, the court will sever and delete the provision from this Agreement. The change will affect neither the validity of the amended provision nor the validity of any other provision of this Agreement, which will continue in full force and effect.
- 15.3. **No waiver:** A party's failure or delay in enforcing any provision of this Agreement will not operate as a waiver of the right to enforce that provision or any other provision of this Agreement at any time. A waiver of any provision of this Agreement must be in writing, specify the provision to be waived and signed by the party agreeing to the waiver.
- 15.4. **Force Majeure; other excusable failures or delays in performance**
- (a) Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.
 - (b) Supplier's failures or delays in its performance are excused to the extent they result from:
 - (i) Customer's acts or omissions, or those of its employees, agents, users, affiliates or contractors;
 - (ii) notwithstanding the generality of the subsection above, Customer's failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement, which task, obligation, or responsibility is a condition or requirement for a Supplier task, obligation, or responsibility;
 - (iii) reliance on instructions, authorizations, approvals or other information from Customer's Representative; or
 - (iv) acts or omissions of third parties (unless directed by Supplier).
- 15.5. **Governing law:** All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive laws for the Territory as specified in **Table 1 of Attachment 1** of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement.
- 15.6. **Jurisdiction:** The courts for the applicable Territory as specified in Attachment 1 will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.

15.7. **Entire Agreement, order of precedence and amendments**

- (a) This Agreement constitutes the entire understanding between Supplier and Customer relating to its subject-matter and supersedes all oral or written proposals, and all communications between the Parties relating to its subject matter. The Terms of this Agreement will prevail, notwithstanding any variance with any Purchase Order or other written instrument submitted by Customer, whether or not expressly rejected by Supplier. All pre-printed terms on a Customer Order are expressly rejected and will not apply.
- (b) If there is any conflict or inconsistency between the terms of any document forming this Agreement, the following order of precedence will apply to the extent of the conflict or inconsistency, unless expressly agreed otherwise in any subordinate document: this Agreement will prevail over the terms of any SOW or Order.

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

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

15.10. **Survival:** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement and any SOW, will survive termination of this Agreement/SOW: Sections: 3.3 (“Effect of Termination”), 5 (“Payment”), 6 (“Taxes”), 7 (“Confidentiality”), 8 (“Intellectual Property Rights”), 9 (“Warranties, Exclusions, Disclaimers”), 10 (“Limitation of Liability”), 11 (“Indemnification”) and 15 (“General”).

-Attachment 1 follows this page-

Attachment 1-Definitions

Capitalized terms used in this Agreement have the following meaning:

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

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

- (a) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;
- (b) can elect a majority of the directors of the other entity; or
- (c) provides day to day management of such entity under contract or as managing general partner.

Affiliate, with respect to Supplier, means any direct or indirect subsidiary of the Supplier.

Agreement means these governing Terms together with any SOW or Order, as applicable.

Agreement Effective Date means the date of the last signature of a SOW or the date of Supplier's acceptance of an Order.

Authorized Partner means any of Supplier's distributors, resellers or other business partners who are authorized by Supplier in writing to sell Services.

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

Customer means the entity to whom the Services are to be provided by Supplier. For avoidance of doubt, "Customer" does not mean an individual consumer.

Customer Data means Customer's Personal Data, sensitive data or other information about Customer, its personnel and other Customer users of the Services (including their name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers' interactions with other computers (including information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, 32 or 64 bit architecture, operating system types, versions, locale, BIOS version, BIOS model, total scanners deployed, database size, system telemetry, device ID, IP address, location, content, Supplier products installed, Supplier components, processes and services information, frequency and details of update of Supplier components, information about third party products installed, extracts of logs created by Supplier, usage patterns of Supplier products and specific features, etc.

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

- (a) is designated as "confidential" or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
- (b) the receiving party (**Recipient**) should reasonably have considered to be confidential under the circumstances surrounding disclosure.

However, Confidential Information does not include any information that:

- (a) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
- (b) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;
- (c) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
- (d) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.

In addition to the above, the Services and associated fees are deemed Supplier's Confidential Information.

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

Data Processing Agreement or DPA means the McAfee Enterprise Data Processing Agreement with Customers posted at <https://www.mcafee.com/enterprise/en-us/about/legal.html>.

Deliverables means any reports, analyses, or other tangible or intangible materials or work product that Supplier delivers to Customer, as set forth in a SOW and/or Order.

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

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

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

- (a) copyright, trademark and patent rights trade secrets, moral rights, right of publicity, authors' rights;
- (b) any application or right to apply for any of the rights referred to in paragraph (a); and

- (c) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in paragraphs (a) and (b).

Malware means applications, executable code or malicious content that Supplier considers to be harmful.

Service Order or Order means a purchase order for Services from Customer to Supplier or an Authorized Partner, as applicable.

Service Order Date means the date when Supplier has accepted an order for Services.

Supplier means one of Supplier’s legal entities listed in Table 1 below who is identified on the Service Order or who has executed a SOW for the Services:

Table 1			
Territory: For Services in the following Regions/Country:	Supplier Entity	Business Address For Notice	Choice of Law and Venue
United States, Mexico, Central America, South America, and the Caribbean	Musarubra US, LLC	6220 America Center Drive, San Jose, CA. 95002 USA	California Law/ The state courts in Santa Clara County or the federal courts in the Northern District of California
All countries in Europe, the Middle East and Africa (EMEA)	Musarubra Ireland Limited	Building 2000, City Gate, Mahon, Cork, Ireland	The laws of the Republic of Ireland/ Courts of the Republic of Ireland
Japan	Musarubra Japan KK	Shibuya Mark City West, 1-12-1 Dogenzaka, Chibuyaku, Tokyo 150-0043	The laws of Japan/ Courts in Tokyo District Court of Japan
Asia Pacific region, but excluding Japan, China, and Australia	Musarubra Singapore Pte Ltd	238 Thomson Road, #12-01/05 Novena Square, Tower A, Singapore, 307684	The laws of the Republic of Singapore/ The courts of the Republic of Singapore
China	McAfee (Beijing) Security Software Co., Ltd	Room 616, No 6 North Worers’ Stadium Road, Chaoyang District, Beijing, China	The laws of the Republic of Singapore/ The courts of the Republic of Singapore
Australia	Musarubra Australia Pty Ltd	40 Mount Stree, Level 16, North Sidney, Australia	The laws of Australia Court of new South Wales, Australia
Sales to the U.S. Government and to state/local governments and	McAfee Public Sector LLC	11911 Freedom Drive, Reston, VA 20190	California law/ The state courts in Santa Clara County

healthcare companies in the United States and Canada			or the federal courts in the Northern District of California
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Supplier Materials means all Intellectual Property Rights that are:

- (a) owned or licensed by Supplier or its third-party licensors prior to performing the Services;
- (b) developed, acquired, conceived or reduced to practice by Supplier or its agents during the provision of the Services, and
- (c) modifications, enhancements and Derivative Works of the Intellectual Property Rights referred to in paragraphs (a) and (b) above.

Supplier’s Privacy Notice refers to Supplier’s Privacy Notice, available at <https://www.mcafee.com/au/about/legal/privacy.aspx>.

Service Order or Order means a purchase order for Services from Customer to Supplier or an Authorized Partner, as applicable.

Personal Data means any information relating directly or indirectly to an identified or identifiable individual.

Representative means a party’s Affiliates, permitted resellers, subcontractors, employees, or authorized agents.

Services means the specific tasks, functions, responsibilities, Deliverables and other professional services to be provided by Supplier to Customer under this Agreement, and as described in an applicable SOW or Order.

Statement of Work or SOW means a written statement of work entered into from time to time by the Parties that describes the Services to be performed by Supplier, the Parties’ respective obligations regarding those Services, and any other related and mutually agreed terms, conditions, and dependencies.

Territory means the country or region where the Services are to be performed, as identified with Table 1 above.

Threat Data means non-personally identifying and non-customer identifying information about malware, threats, actual or attempted security events, including but not limited to their frequency, source, associated code, general identifiers, attacked sectors and geographies.

-Attachment 2 follows this page-

Attachment 2-Additional Terms for Training Services

1. These additional terms in this **Attachment 2** apply to any training Services provided by Supplier to Customer.
2. Supplier will provide confirmation of the training Services to Customer prior to the start date of the training course. Customer must book all courses for training Services within one (1) year of the date of Supplier's invoice for those training Services otherwise Supplier may, at its sole discretion, cancel all or a portion of the training Services that have not been booked by Customer. Customer agrees that any fees for training Services are non-refundable or available for credit or exchange, except as expressly agreed to in writing by Supplier.
3. **Training Services fees:** Supplier's fees for training Services will cover the fees for the trainer at Supplier's training center, use of the training systems, reasonable refreshments and course materials for participants. Supplier is not liable for any travel or accommodation costs incurred by Customer or any of its attendees to attend the relevant training course. Unless agreed otherwise in writing, Supplier will provide all training Services in English.
4. **Payment:** If Customer is purchasing the training Services directly from Supplier, Customer must pay all training Services fees in accordance with Supplier's invoice to ensure that Supplier has received the training Services fees at least fourteen (14) days prior to the start date of the relevant training course.
5. **Cancellation.**
 - 5.1 **By Customer:** Customer must cancel any scheduled training Services in writing within fourteen (14) days of the training course start date to avoid paying fees. Customer will pay Supplier the following fees for training Services cancellations within less than fourteen (14) days:
 - (a) fifty percent (50%) of the fees costs and expenses relating to the cancelled training course (including invoicing costs for this amount) if Supplier receives Customer's cancellation notice between seven (7) and fourteen (14) days of the training course start date; or
 - (b) the full amount of fees costs and expenses relating to the cancelled training course (including invoicing costs for this amount) if Supplier receives Customer's cancellation notice less than seven (7) days prior to the training course start date.
 - 5.2 **By Supplier:**
 - (a) Supplier may cancel any training Services without liability or penalty if it has not receiving the related training Services fees in accordance with Section 14.3.
 - (b) Supplier may cancel training Services at any time for convenience. If Supplier is unable to provide a suitable substitute training course, Supplier's sole liability to Customer will be to refund the training Services fees paid by Customer. For the avoidance of doubt, Supplier will not be liable for any travel or hotel costs associated with the cancellation under this section.
 - 5.3 **Substitution and Rescheduling.**
 - (a) Customer may substitute training course attendees with employees with substantially equivalent qualifications required for participation in the training course, at

Customer's discretion. However, Supplier reserves the right to refuse or to limit any training Services if Supplier considers that a Customer attendee fails to satisfy the requirements for the relevant training course. Customer may reschedule the training course, subject to availability, by providing Supplier with fourteen (14) days prior written notice.

- (b) Supplier reserves the right to use substitute instructors, to modify the training Services content slightly and to make changes to the dates and locations of any scheduled training course upon notice to Customer. If Customer cannot attend because of the changes, Customer may rebook for another available course. Supplier will not be liable for any Customer costs associated with the rescheduling.
- (c) **Conduct:** Supplier reserves the right to refuse, limit or cancel any training Services if a Customer attendee, in the sole opinion of Supplier, has displayed unreasonable behavior or is deemed to be violent, abusive or disruptive. In such case, Customer will not be entitled to any refunds.

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

-End of Attachment 2-

-End of Agreement-