

## Rider to McAfee Software License and Maintenance Plan

This rider (Rider) to the McAfee End User License Agreement (License) is between McAfee Public Sector LLC with offices located at 2821 Mission College Blvd., Santa Clara, CA 95054 (Licensor) and the State of Oregon, its Agencies, and political subdivisions, including Oregon Cooperative Purchasing Program (ORCPP) members, acting through its Department of Administrative Services (Licensee), and amends and supersedes any provision to the contrary in the License, and any documents incorporated or referenced therein, including but not limited to, the McAfee Technical Support and Maintenance Terms and Conditions (Maintenance Plan), Grant Letters, or the McAfee Privacy Policy (collectively, EULA Documents).

Notwithstanding any language in the EULA Documents to the contrary, Licensor and Licensee agree:

1. **Applicability.** This Agreement pertains to the Software identified in the EULA Documents, including related intellectual property (such as documentation) licensed by Licensor to Licensee under this Agreement, and related maintenance and support services. No Licensor-hosted software or software as a service is available under this Agreement. Accordingly, the McAfee Cloud Services Agreement referenced in the License is not applicable to this Agreement.
2. **Complete Agreement.** This Agreement consists of this Rider, the License, in the form attached as Exhibit A, the Maintenance Plan, in the form attached as Exhibit B, and any Grant Letters and the McAfee Privacy Policy. These exhibits are hereby incorporated into this Agreement by this reference. This Agreement merges all prior and contemporaneous communications with respect to the matters described in this Agreement.
3. **Order of Precedence.** In the event of any conflict between the Rider, the License along with any terms and conditions published by Licensor on or after the Effective Date of this Agreement (including updates to any policy referenced in the EULA Documents), the Maintenance Plan, Grant Letters, McAfee Privacy Policy, and any terms presented to an end user in a “click wrap” or similar end user agreement, the conflict will be resolved in that order.
4. **Effective Date and Term.** This Agreement is effective when it is fully executed and approved according to applicable laws, rules, and regulations (Effective Date). This Agreement continues in effect unless terminated by either party by providing notice in accordance with Section 8 of the License or specified in this Rider.
  - 4.1. There is no automatic renewal for the term of the License or the maintenance and support services. Subsequent terms of either the License or the Maintenance Plan may be renewed as of the anniversary date.
    - 4.1.1. Licensor may terminate or suspend the License and maintenance and support services if Licensee fails to pay a past-due invoice for a renewal term within 30 calendar days of receipt of written notice of such failure.
    - 4.1.2. If Licensee fails to maintain Support continuously and wishes to reinstate the License and the maintenance and support services, Licensee will purchase Support to cover the period of lapsed Support as well as the applicable renewal period until the Support is

current at then-current rates, provided, however, that the reinstatement rates are not more than 10% higher than the last rates paid by Licensee

**5. Payment.**

- 5.1. Software and services are payable through Licensor's authorized reseller.
- 5.2. Licensee's obligation to pay late charges is subject to ORS 293.462.
- 5.3. Any Licensee obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations of the Statewide Travel Policy, currently found online at: <http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

**6. Confidentiality.**

- 6.1. Any obligation of Licensee to maintain the confidentiality of Licensor's proprietary information provided to Licensee is conditioned by and subject to Licensee's obligations under the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.311 through 192.478 which may require disclosure of proprietary information as a "public record" unless exempt under ORS 192.345 or ORS 192.355.
- 6.2. Any information Licensor or its employees or agents receives from or relates to Licensee or Licensee's clients (Licensee Data) is owned by Licensee. Licensee hereby grants Licensor a license to use Licensee Data to fulfill the purposes of this Agreement, and otherwise only as specifically described in this Agreement.
- 6.3. Licensor shall comply with the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 through 646A.628, to the extent applicable.
- 6.4. Licensor acknowledges that, it and its employees, subcontractors, or agents in the course of this Agreement may be exposed to or acquire information that is confidential to Licensee or Licensee's clients. Licensee Data is confidential information of Licensee, with the exception of:
  - 6.4.1. Information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by Licensor;
  - 6.4.2. Information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality;
  - 6.4.3. Information that was known to Licensor prior to the Effective Date of the Agreement without obligation of confidentiality;
  - 6.4.4. Information that is independently developed by Licensor and documented in writing without use of, or reference to, any confidential information of Licensee; and
  - 6.4.5. Information required to be disclosed by compulsory judicial or administrative process or by law or regulation.
  - 6.4.6. If Licensor is required to disclose confidential information under clause 6.4.5, Licensor shall first give Licensee notice and provide such information as may reasonably be necessary to enable Licensee to take action to protect its interests.

- 6.5. Licensee hereby grants Licensor a license to use its Data, as Data is defined in Section 11 of the License, only to fulfill the purposes of this Agreement. Licensee Data will not be stored outside of the United States or its territories. Licensee networks and systems may only be accessed from outside of the United States or its territories, including for maintenance and support services, with prior written permission of the Licensee's authorized representative.
- 7. Licensee Liabilities and Indemnification.** Licensee's liabilities under this Agreement and any Licensee obligation under the EULA Documents to indemnify or hold Licensor harmless against claims brought by third parties against Licensor are subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300. Licensee has no obligation to defend Licensor.
- 8. Licensor Indemnification.** In addition to the Intellectual Property Indemnity in Section 7 of the License, Licensor shall indemnify, defend, and hold Licensee, the State of Oregon, and their agents, officials and employees harmless from all third party claims, demands, suits, actions, proceedings, losses, liabilities, damages, awards, and costs (including reasonable attorneys' fees and expenses), which may be brought or made against Licensee, the State of Oregon, or their agents, officials, or employees and arising out of or related to any of the following (each an indemnifiable loss):
- 8.1. Personal injury, death or tangible property damage caused by any alleged act, omission, error, fault, mistake or negligence of Licensor, its employees, agents, or representatives in connection with Licensor's performance under or related to the Agreement.
- 8.2. Any willful or grossly negligent act or omission by Licensor.
- 8.3. Licensee will timely notify Licensor in writing of any action, claim or demand of which Licensee becomes aware and which Licensee reasonably expects to result in an indemnifiable loss. Licensor's obligation under this section does not extend to any indemnifiable loss to the extent caused by: (i) the negligence or willful misconduct of Licensee, the State of Oregon, or their agents, officials or employees; (ii) Licensee's modification of Licensor's software where the unmodified version of the software would not cause an indemnifiable loss; or (iii) the exceptions addressed within Exhibit A, Section 10.1(b).
- 9. Defense of Claims.** To the extent Licensor is required under this Agreement to defend Licensee against claims asserted by third parties, including under Section 7 of the License, Licensee shall reasonably cooperate in good faith, at Licensor's reasonable expense, in the defense of the claim, Licensor shall select counsel reasonably acceptable to the Oregon Attorney General and in compliance with ORS Chapter 180 to defend the claim, and Licensor shall bear all costs of its counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld. Licensee may elect to assume its own defense with an attorney of its own choice and at its own expense any time Licensee determines important governmental interests are at stake. Licensee will promptly provide notice to Licensor of any claim that may result in an obligation on the part of Licensor to defend. Subject to these limitations, Licensor may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of Licensee, which consent must not be unreasonably withheld.

**10. Governing Law; Jurisdiction; Venue.** This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LICENSOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SAID COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE AN INCONVENIENT FORUM. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.

**11. Attorneys' Fees.** Neither party to this Agreement is entitled to obtain judgment from the other party for attorneys' fees incurred in any litigation between the parties. Except as allowable under Sections 7 and 8 of this Rider, neither party may obtain judgment from the other party for attorneys' fees incurred in the defense of any claim asserted by a third party.

**12. Access and Audit rights.** Licensor's audit rights in Section 12 of the License are modified to provide:

12.1. Any audit will take place no more than once every 12 months, upon not fewer than 30 calendar days' written notice, during normal business hours and in a manner that does not interfere unreasonably with Licensee's operations. Licensee will provide Licensor or the independent auditor with information reasonably requested in furtherance of the verification; however, Licensor has no right of access to any locations, servers, computers, records, data, accounts, or other information protected by law from disclosure. As an alternative, Licensor can request Licensee complete a self-audit questionnaire.

12.2. If the agreed-upon final audit report reveals that Licensee does not have sufficient licenses to meet its actual use, Licensee will order sufficient license(s) at Licensor's then-current rates, provided, however, that the rates are not more than 10% higher than the last rates paid by Licensee. Licensee will not pay a penalty.

12.3. Each party will bear its own costs of any activity conducted pursuant to Section 12 of the License.

**13. Dispute Resolution.** Any dispute between the parties under this Agreement that is not resolved through informal discussions may be submitted to mediation upon the consent of both parties. If informal discussions or mediation are unsuccessful, either party may initiate litigation to resolve the dispute. The parties specifically disclaim any right to arbitration of disputes.

**14. Incorporation of Oregon Statutes.** ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference.

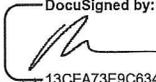
- 15. Termination for Lack of Funding.** Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.
- 16. Independent Contractor.** Licensor is at all times an independent contractor and not as an agent, employee, or representative of Licensee. Licensor has no right or authority to incur or create any obligation for or legally bind Licensee in any way. Licensor is not an "officer," "employee" or "agent" of Licensee or any other agency, office, or department of the State of Oregon, as those terms are used in ORS 30.265, and Licensor shall make no representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for in the Contract or authorized in writing by the party to be bound.
- 17. Publicity.** Licensor may disclose the form and existence of this Agreement in advertising, press releases or other materials distributed to prospective customers, but shall not otherwise attempt to obtain publicity from its association with Licensee or the State of Oregon, whether or not such disclosure, publicity or association implies an endorsement by Licensee or the State of Oregon of Licensor's products and services, without the prior written consent of Licensee.
- 18. Counterparts.** This Rider may be executed in two or more counterparts, by facsimile or otherwise, each of which is an original, and all of which together constitute one and the same instrument, notwithstanding that all parties are not signatories to the same counterpart.
- 19. Amendments.** This Agreement may be amended, modified, or supplemented only by a written amendment that, if required by applicable law, has been approved according to applicable laws, rules and regulations, and for legal sufficiency by DOJ. No amendment will be effective until all requisite signatures and approvals are obtained from both parties.
- 20. Statewide Price Agreement.** The software and maintenance and support services are available through a price agreement with a Licensor-authorized reseller. Such price agreement is held by the Oregon Department of Administrative Services under applicable Oregon law. Licensee will order software and services via a purchase order issued to the reseller.
- 21. No Third Party Beneficiaries.** Licensee and Licensor are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 22. Survival.** The provisions of this Rider survive termination.
- 23. Non-Discrimination.** If the anticipated total value of the Software and services to be provided under this Agreement is \$150,000 or more, Licensor certifies that it has a written policy and practice that meets the requirements described ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Licensor agrees, as a material condition, to maintain such policy and practice in force during the term of this Agreement.
- 24. Tax Compliance.** By executing this Rider, the undersigned certifies under penalty of perjury that Licensor has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state, and that Licensor has no undisclosed liquidated and delinquent debt owed to this state or any political subdivision. Licensor shall, for the duration of this

Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Licensor, to Licensor's property, operations, receipts, or income, or to Licensor's performance of or compensation for any work performed by Licensor; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Licensor, or to goods, services, or property, whether tangible or intangible, provided by Licensor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

24.1. This Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes and debt due to the State of Oregon or a political subdivision, including (i) garnishing Licensor's compensation under this Agreement, or (ii) exercising a right of setoff against Licensor's compensation relating to this Agreement for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

**LICENSOR:**

McAfee Public Sector, LLC

DocuSigned by:  


Kenneth Kartsen

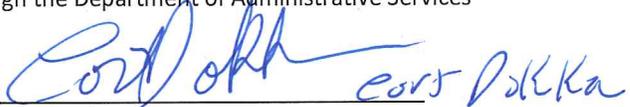
By: \_\_\_\_\_

As: Vice President Public Sector

Date: Jul-22-2019

**LICENSEE:**

The State of Oregon,  
acting through the Department of Administrative Services

By: 

As: Procurement Manager

Date: 7-22-19

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## EXHIBIT A Software License Agreement

### 1. LICENSE GRANT; PROPRIETARY RIGHTS

- 1.1 **Right to use the Software:** Subject to the terms and conditions of this Agreement, McAfee grants Company a non-exclusive, non-transferable right to use the Software listed in the Grant Letter solely for Company's own internal business operations. In this Agreement, to use the Software includes to download, install, and access the Software. Company is not granted rights to Updates and Upgrades unless Company has purchased Support (or a service subscription granting rights to Updates and Upgrades).

### 2. COPY AND USE TERMS

- 2.1 **Product Entitlement:** The use of the Software depends on the licenses purchased (e.g. nodes) and is subject to the Product Entitlement definitions.
- 2.2 **Multiple platforms/bundles:** If the Software supports multiple platforms or if Company receives the Software bundled with other software, the total number of devices on which all versions of the Software is installed may not exceed Company's Product Entitlement. Certain Software licensed as part of a suite-based McAfee product may also require the purchase of a separate McAfee server license to use the Software on certain types of servers, in each case as specified in the Documentation.
- 2.3 **Term:** The license is effective for the limited time specified in in the Grant Letter. If no term is specified, the licenses will be perpetual.
- 2.4 **Copies:** Company may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes.
- 2.5 **Affiliates, Managing Parties:** Company may permit use of the Software in accordance with this Agreement:
- (a) by an Affiliate;
  - (b) by a third party with which Company enters into a contract to manage Company's information technology resources (**Managing Party**) if:
    - (i) the Managing Party only uses the Software for Company's internal operations and not for the benefit of another third party or itself;
    - (ii) the Managing Party agrees to comply with the terms and conditions of this Agreement; and
    - (iii) Company provides McAfee with written notice that a Managing Party will be using the Software on Company's behalf.
- Company is responsible and fully liable for each Affiliates' and Managing Party's compliance with or breach of this Agreement.
- 2.6 **General restrictions:** Company may not, and may not cause or allow any third party to:
- (a) decompile, disassemble or reverse-engineer the Software, or create or recreate the source code for the Software;
  - (b) 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 Company make of the Software and Documentation;
  - (c) 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;
  - (d) 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 any routine, script, code, or program) having any functional attributes, visual expressions or other features similar to those of the Software to compete with McAfee;
  - (e) except with McAfee's prior written permission, publish any performance or benchmark tests or analysis relating to the Software;
  - (f) attempt to do any of activities in Subsections (a) to (e); or
  - (g) run or operate the Software in a cloud, Internet-based computing or similar on-demand computing environment unless Company's Grant Letter or the applicable Product Entitlement Definitions specifically allows the use.

### 3. TECHNICAL SUPPORT AND MAINTENANCE

The Technical Support and Maintenance Terms and Conditions, which are incorporated by reference, apply if Company has purchased Support. After the Support Period or service subscription period specified in a Grant Letter has expired, Company has no further rights to receive any Support including Upgrades, Updates and telephone Support. McAfee may change the Support offered at any time, effective as of the commencement of any Support renewal period.

### 4. TERMINATION

- 4.1 Without prejudice to Company's payment obligations, Company may terminate Company's license at any time by uninstalling the Software.
- 4.2 McAfee may terminate Company's license if Company materially breaches this Agreement and Company fails to cure the breach within thirty (30) days of receiving McAfee's notice of the breach. Upon termination, Company must promptly return, destroy or delete permanently all copies of the Software and Documentation.
- 4.3 **End-of-Life:** Company's right to use the Software, and any features of the Software, are subject to the End-of-Life Policy

<https://www.mcafee.com/us/resources/misc/support-policy-product-support-eol.pdf>. Upon the End-of-Life date of a Software or any feature of a Software (as described in the End-of-Life Policy), Company's right to use the Software or feature will terminate.

## 5. PAYMENTS; TAXES; AUDIT

- 5.1 **Payments:** Unless Company is purchasing the McAfee Products through an Authorized Partner, in which case payment obligations will be exclusively between the Authorized Partner and Company, Company will pay McAfee the fees for the McAfee Product within thirty (30) days of the invoice date. Late payments are subject to interest of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If Company considers an invoice is incorrect, Company must contact McAfee in writing within thirty (30) days of the date of invoice to request an adjustment or credit.
- 5.2 **Transaction Taxes:** If Company purchases the McAfee Products directly from McAfee for use or resale, Company will pay all applicable transaction taxes, including sales and use taxes, value added taxes, duties, customs, tariffs, and other government-imposed transactional charges however designated (and any related interest or penalty) on amounts payable by Company under this Agreement (**Transaction Taxes**). McAfee will separately state on its invoices the Transaction Taxes that McAfee is required to collect from Company under applicable law. Company will provide proof of any exemption from Transaction Taxes to McAfee at least fifteen (15) Business Days before the due date for paying an invoice. If McAfee does not collect the required Transaction Taxes from Company but is subsequently required to remit the Transaction Taxes to any taxing authority, Company will promptly reimburse McAfee for the Transaction Taxes, including any accrued penalty or interest charges if the failure to timely collect and remit was not due to the fault of McAfee.
- 5.3 **Withholding Taxes:** All payments due from Company will be made free and clear and without deduction for any present and future taxes imposed by any taxing authority. If Company is required by applicable law to deduct or withhold income taxes from amounts payable to McAfee under this Agreement (**Withholding Taxes**), Company will remit, and provide McAfee with evidence that Company has remitted, the Withholding Taxes to the appropriate taxing authority and pay to McAfee the remaining net amount. Company will provide written notice to McAfee of its intent to withhold (including details of the amounts and legal basis for Withholding Taxes) at least fifteen (15) Business Days before the due date for any payments under this Agreement and will cooperate with McAfee to reduce any Withholding Taxes. If McAfee provides Company with valid and official documentation issued by the relevant taxing authority for a lower rate of Withholding Taxes, then Company will apply the lower rate.
- 5.4 If Company purchases the McAfee Products through an Authorized Partner, the obligations regarding Transaction Taxes or Withholding Taxes will be the exclusive responsibility of the Authorized Partner or Company, and the rules in Sections 5.2 and 5.3 do not apply as between McAfee and Company.
- 5.5 **Income Taxes:** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 5.6 **Audit:** McAfee may request, and Company must provide within thirty (30) days from the request date, a Software-facilitated system-generated report (**System Report**) verifying Company's Software deployment. Company acknowledges that the System Report is based on technological features of the Software that provide Software deployment verification. If the Software does not contain technological features that provide Software deployment verification, Company will prepare and provide to McAfee an accurate Software deployment verification report for the Software within thirty (30) days from McAfee's request. McAfee will only request the System Report (or Company's prepared Software deployment verification report) once per year and will not unreasonably interfere with the conduct of Company's business. If a System Report or Company's prepared Software deployment verification report identifies that Company is out of compliance with the license terms of this Agreement, you will be required to purchase the additional licenses and pay any reinstatement fees associated with the licenses and Support. McAfee may also charge an out-of-compliance fee.

## 6. CONFIDENTIALITY

- 6.1 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.
- 6.2 Each Recipient of Confidential Information under this Agreement must:
- 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;
  - 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
  - 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:
    - any disclosure made to the Recipient's employees, contractors or agents is on a need-to-know basis; and
    - 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.
- 6.3 Notwithstanding the restrictions in Section 6.2, 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 regulator, court, arbitral, administrative, or legislative body, the Recipient must:
- 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;
  - disclose only the minimum amount of Confidential Information required to satisfy the legal obligation; and
  - assert and take proper steps with the body requiring disclosure to maintain the confidentiality of the Confidential Information to be disclosed.

- 6.4 Company will immediately, and at least within 72 hours, notify McAfee if Confidential Information of McAfee is used or disclosed in breach of this Agreement. As monetary damages may not be sufficient relief if anyone violates or threaten to violate the terms of this section, McAfee is immediately entitled to enforce its rights by specific performance or injunction proceedings, in addition to any other rights or remedies it may have.
- 6.5 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.
- 6.6 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. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Software, including its object code and source code, whether or not provided to Company, is Confidential Information of McAfee. McAfee (or its licensors) owns exclusively and reserves all rights, title and interest in and to the McAfee Products and Documentation, including all Intellectual Property Rights as well as any Derivative Works. Company may not exercise any right, title and interest in and to the McAfee Products, Documentation or any related Intellectual Property Rights, except for the limited usage rights granted to Company in this Agreement. Company agrees, on behalf of itself and its Affiliates, that Company and its Affiliates will take no action inconsistent with McAfee's Intellectual Property Rights.
- 7.2 This Agreement is not an agreement of sale, and does not transfer any title, Intellectual Property Rights or ownership rights to the McAfee Products or Documentation to Company. Company acknowledges and agrees that the McAfee Products, Documentation and all ideas, methods, algorithms, formulae, processes and concepts used in developing or incorporated into the McAfee Products or Documentation, 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 and database updates and other updates in, of, or to the McAfee Products or Documentation, as applicable, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and proprietary property of McAfee, having great commercial value to McAfee.

## 8. LIMITED WARRANTY AND DISCLAIMER

- 8.1 **Limited warranty:** McAfee warrants that, for a period of sixty (60) days from the purchase date (**Warranty Period**), the Software licensed under this Agreement will perform substantially in accordance with the Documentation (**Limited Warranty**). Company's exclusive remedy and McAfee's entire obligation and liability for any breach of the Limited Warranty is to repair or replace the Software or refund to Company the price Company paid for the Software if a repair or replacement of the Software would, in McAfee's opinion, be unreasonable. The Limited Warranty is conditioned upon Company providing McAfee prompt written notice of the Software's failure to perform substantially in accordance with the Documentation.
  - 8.2 **Exclusion of warranty:** The Limited Warranty will not apply if:
    - (a) the Software is not used in accordance with this Agreement or the Documentation;
    - (b) the Software or any part of the Software has been modified by any entity other than McAfee; or
    - (c) a malfunction in the Software has been caused by any equipment or software not supplied by McAfee.
  - 8.3 **Disclaimer of warranties:** EXCEPT FOR THE LIMITED WARRANTY, THE SOFTWARE IS PROVIDED "AS IS". TO THE EXTENT PERMITTED BY LAW, MCAFEE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SOFTWARE AND SUPPORT, AND MCAFEE DISCLAIMS ALL OTHER OBLIGATIONS AND LIABILITIES, OR EXPRESS OR IMPLIED WARRANTIES REGARDING THE SOFTWARE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR SYSTEMS INTEGRATION. WITHOUT LIMITATION, MCAFEE MAKES NO WARRANTY, REPRESENTATION OR GUARANTEE AS TO THE SOFTWARE'S USE OR PERFORMANCE, OR THAT THE OPERATION OF THE SOFTWARE WILL BE FAIL-SAFE, UNINTERRUPTED OR FREE FROM ERRORS OR DEFECTS; OR THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS.
  - 8.4 **High Risk Systems terms:** THE SOFTWARE MAY FAIL AND IS NOT DESIGNED, DEVELOPED, TESTED, OR INTENDED TO BE RELIABLE IN THE CONTEXT OF HIGH RISK SYSTEMS. MCAFEE HAS NO RESPONSIBILITY FOR, AND COMPANY WILL INDEMNIFY AND HOLD HARMLESS MCAFEE FROM, ALL CLAIMS, SUITS, DEMANDS AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH COMPANY'S USE OF THE SOFTWARE ON OR IN A HIGH RISK SYSTEM, INCLUDING THOSE THAT COULD HAVE BEEN PREVENTED BY DEPLOYMENT OF FAIL-SAFE OR FAULT-TOLERANT FEATURES TO THE HIGH RISK SYSTEM, OR ARE BASED ON A CLAIM, ALLEGATION, OR ASSERTION THAT THE FUNCTIONING OF 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.
  - 8.5 **Third parties:** The McAfee Products may contain independent third-party products and rely on them to perform certain functionality, including malware definitions or URL filters and algorithms. McAfee makes no warranty as to the operation of any third-party products or the accuracy of any third-party information.
9. **LIMITATION OF LIABILITY:** EACH PARTY'S ENTIRE AGGREGATE LIABILITY TO THE OTHER PARTY FOR CLAIMS UNDER OR RELATED TO THE SUBJECT-MATTER OF THIS AGREEMENT WILL NOT EXCEED THE TOTAL PAYMENTS PAID OR PAYABLE BY COMPANY TO MCAFEE UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRIOR TO THE CLAIM. NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE DAMAGES WERE FORESEEABLE OR A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER SUCH CLAIMS ARISE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, STATUTE OR OTHERWISE. NOTHING IN THIS AGREEMENT LIMITS OR EXCLUDES ANY

LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

10. INDEMNIFICATION

10.1 McAfee indemnification obligations

- (a) McAfee will indemnify Company and, at McAfee's election, defend Company against a third-party claim asserted against Company in a suit or action if the claim is for direct patent infringement, for direct copyright infringement, or for McAfee's trade secret misappropriation, and the claim is asserted against the Software alone and not in combination with anything else, or solely a combination of McAfee Products.
- (b) **Exclusions:** Notwithstanding anything to the contrary in this Agreement, McAfee will not indemnify or defend Company for claims asserted, in whole or in part, against:
  - (i) technology, designs or requirements that Company gave to McAfee;
  - (ii) modifications or programming to Software that were made by anyone other than McAfee; or
  - (iii) the Software's alleged implementation of some or all of a Standard.
- (c) **Remedies:** McAfee may, in its sole discretion and at its own expense, with respect to any Software that is subject to a claim:
  - (i) procure Company with the right to continue using the Software;
  - (ii) replace the Software with a non-infringing Software;
  - (iii) modify the Software so that it becomes non-infringing; or
  - (iv) upon Company's return of the Software to McAfee and removal of the Software from Company's systems, refund the residual value of the purchase price Company paid 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 Company.

10.2 **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.

10.3 **Personal and exclusive indemnity:** The foregoing indemnities are personal to the parties and may not be transferred anyone. This section states the parties' entire indemnification obligations, and Company's exclusive remedy claims involving Intellectual Property Rights.

11. ADDITIONAL TERMS

11.1 **Evaluation Software:** If McAfee identifies the Software licensed to Company as "Evaluation" Software, this section and Section 11.3 apply and supersede any conflicting term of this Agreement. Company's royalty-free, non-transferable, limited license to use the Evaluation Software, for evaluation purposes only, is limited to thirty (30) days unless agreed otherwise in writing by McAfee. The Evaluation Software may contain errors or other problems that could cause system or other failures and data loss. Company may use any information about the Evaluation Software gathered from its use solely for evaluation purposes and must not provide that information to any third parties. The restrictions described in Section 2.6 apply. If Company fails to destroy the Evaluation Software after the evaluation period has expired, McAfee may, at its discretion, invoice Company in an amount equal to the McAfee book price for the Software and Company must pay such invoice upon receipt.

11.2 **Beta Software:** If McAfee identifies the Software licensed to Company as "Beta" Software, this section and Sections 11.1 (with all references to "Evaluation Software" being replaced with "Beta Software") and 11.3 apply. McAfee has no obligation to Company to further develop or publicly release the Beta Software. Support is not available for Beta Software. If requested by McAfee, Company will provide feedback to McAfee regarding testing and use of the Beta Software, including error or bug reports. Company grant McAfee a perpetual, non-exclusive, royalty-free, worldwide license to use, copy, distribute and make Derivative Works and incorporate the feedback into any McAfee Product, at McAfee's sole discretion. Upon receipt of a later unreleased version of the Beta Software or release by McAfee of a publicly released commercial version of the Beta Software, Company must return, destroy or delete permanently all earlier Beta Software received from McAfee.

11.3 **Disclaimer of warranties:** McAfee's indemnification obligations under Section 10 do not apply to Evaluation Software and Beta Software. Evaluation Software and Beta Software are provided to Company solely on an "AS IS" basis. To the extent permitted by law, McAfee makes no other warranties of any kind, express or implied, with respect to the Evaluation Software and Beta Software, and disclaims all other obligations and liabilities, or express and implied warranties regarding the Evaluation Software and Beta Software, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-infringement; or that the Evaluation Software and Beta Software will be free from errors or defects. Company assumes all risk of use of Evaluation Software and Beta Software. If the laws in Company's jurisdiction do not allow the exclusion of express or implied warranties, the disclaimer in this section may not apply and the express or implied warranties will be limited in duration to any minimum period required by applicable law, and the aggregate liability of McAfee and licensors will be limited to the sum of fifty (50) United States dollars (or the then-current value in the relevant local currency) in total.

11.4 **"Free" or Open-Source Software:** The Software may include components (including programs, applications, tools, utilities, libraries, and other programming code) that are made available from third parties under a free or open source software licensing model (**FOSS Code**). FOSS Code components included with the Software are redistributed by McAfee under the terms of the applicable FOSS Code license for such component; Company's receipt of FOSS Code components from McAfee under this Agreement neither enlarges nor curtails Company'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.

## 12. PRIVACY AND COLLECTION OF PERSONAL DATA OR SYSTEM INFORMATION

- 12.1 The Software or Support may employ applications and tools to collect Personal Data, sensitive data or other information about Company and End Users ( including End Users' 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, 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.) (collectively, **Data**).
- 12.2 The collection of the Data may be necessary to provide Company and End Users with the relevant Software or Support functionalities as ordered (including detecting and reporting threats and vulnerabilities on Company's and End Users' computer network), to enable McAfee to improve our Software, Support (including content synchronization, device tracking, troubleshooting, etc.), to enable McAfee to manage licenses to our Software, Support and to further or improve overall security for Company and End Users. Company may be required to uninstall the Software or disable Support to stop further Data collection that supports these functions.
- 12.3 By entering into this Agreement, or using the Software, Support or service subscription, Company and End Users agree to the McAfee Privacy Policy available at <https://www.mcafee.com/us/about/legal/privacy.aspx> and to the collection, processing, copying, backup, storage, transfer and use of the Data by McAfee and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions potentially outside of Company's or End Users' own jurisdiction as part of the Software, Support or service subscription. McAfee will only collect, process, copy, backup, store, transfer and use Personal Data in accordance with the McAfee Privacy Policy including McAfee's Data Processing Agreement found on such page, if such is applicable and is executed by the parties.
- 12.4 Company will secure any and all privacy-related rights and permissions from individual persons as may be required by regulation, statute, or other law or Company's internal policies or guidelines in order to disclose Company Personal Data, in order to use the Software, and/or in connection with McAfee's performance of Support or otherwise under this Agreement.

## 13. COMPLIANCE WITH LAWS

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

## 14. GENERAL PROVISIONS

- 14.1 **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. The Agreement is not intended to create a third-party beneficiary of any kind. Company must not represent to any third party that it has any right to bind McAfee in any manner and Company will not to make any representations or warranties on behalf of McAfee.
- 14.2 **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.
- 14.3 **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.
- 14.4 **Force Majeure; other excusable failures or delays in performance**
  - (a) Neither party is liable for delays or failures to perform any of its obligations under this Agreement to the extent caused by a Force Majeure Event.
  - (b) McAfee's failures or delays in its performance are excused to the extent they result from:

- (i) Company's acts or omissions, or those of its employees, agents, users, affiliates or contractors;
    - (ii) notwithstanding the generality of Section 14.4(b)(i), Company's failure or delay in the performance of a specific task, obligation, or responsibility under this Agreement or a Schedule, which task, obligation, or responsibility is a condition or requirement for a McAfee task, obligation, or responsibility;
    - (iii) reliance on instructions, authorizations, approvals or other information from Company; or
    - (iv) acts or omissions of third parties (unless directed by McAfee).
  - 14.5 **Governing law:** All disputes arising out of or relating to this Agreement or its subject-matter will be governed by the following substantive laws, excluding rules relating to conflict of laws:
    - (a) the laws of the State of New York, if Company purchased the McAfee Products in the United States, Mexico, Central America, Canada, South America or the Caribbean;
    - (b) the laws of the Republic of Ireland, if Company purchased the McAfee Products in Europe, Middle East, Africa, or the region commonly referred to as Oceania (except Australia and New Zealand);
    - (c) the laws of Japan, if Company purchased the McAfee Products in Japan;
    - (d) the laws of the Republic of Singapore, if Company purchased the McAfee Products in Asia Pacific (including Australia and New Zealand); or
    - (e) the laws of the Republic of Ireland if Company purchased the McAfee Products in any other country, unless another local law is required to apply.

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.
  - 14.6 **Jurisdiction:** The following courts will each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject-matter:
    - (a) the United States District Court for the Southern District of New York and state courts located in the state of New York, when New York law applies;
    - (b) the courts in the Republic of Ireland, when the law of Ireland applies;
    - (c) the courts in Japan, when the law of Japan applies; or
    - (d) the courts in the Republic of Singapore when the law of Singapore applies.
  - 14.7 **Entire Agreement, order of precedence and amendments**
    - (a) This Agreement constitutes the entire understanding between McAfee and Company relating to its subject-matter and supersedes all oral or written proposals, and all communications between the parties relating to its subject-matter. This Agreement, including all document incorporated by reference, as well as the Grant Letter will prevail, notwithstanding any variance with any purchase order or other written instrument submitted by Company, whether or not expressly rejected by McAfee.
    - (b) McAfee reserves the right to amend any terms of this Agreement at any time. Any amendment will be, effective on the posting of an updated version at [www.mcafee.com/eula](http://www.mcafee.com/eula).
  - 14.8 **Notices:** Any notice given under or in relation to this Agreement must be in writing, signed by or on behalf of the party giving it, and addressed to the relevant McAfee entity, "Attention Legal Department", at the corresponding address, or to Company, at the contact information Company provided when purchasing or registering for the McAfee Products. 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.
  - 14.9 **Additional documents and references:** References to hyperlinked terms in this Agreement are references to the terms or content linked to the hyperlink (or the replacement hyperlink as McAfee may identify from time to time) as amended from time to time. Company acknowledges that the terms or content in the hyperlink are incorporated in this Agreement by reference and that it is Company's responsibility to review the terms or content in the hyperlinks referenced in this Agreement.
  - 14.10 **Assignment:** Company may not sublicense, assign or transfer its rights under this Agreement without McAfee's prior written consent. Any attempt by Company to sublicense, assign or transfer any of its rights, duties or obligations under this Agreement, whether directly, or indirectly by merger, acquisition or change of control, will be null and void.
  - 14.11 **Notice to U.S. Government End Users:** The Software and accompanying Documentation are considered "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software and accompanying Documentation by the United States Government will be governed solely by this Agreement and will be prohibited except to the extent expressly permitted by this Agreement.
  - 14.12 **Survival:** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 6 (Confidentiality), 7 (Intellectual Property Rights), 8 (Limited warranty and disclaimer), 9 (Limitation of liability), **Error! Reference source not found.** (Indemnification), 11.3 (Disclaimer of warranties regarding Evaluation Software and Beta Software), 12 (Privacy and collection of Personal Data or system information), 14.5 (Governing law), 14.6 (Jurisdiction), 15 (Definitions and interpretation) and this section (Survival).
15. **DEFINITIONS AND INTERPRETATION**
- 15.1 In this Agreement:
    - (a) **Authorized Partner** means any of McAfee's Distributors, Resellers or other business partners.

- (b) **Affiliates**, with respect to Company, means any entity that, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with such entity or one or more of the other Affiliates of that entity (or a combination thereof). For the purpose of this definition, an entity controls another entity if and as long as the first entity:
- (i) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity;
  - (ii) can elect a majority of the directors of the other entity; or
  - (iii) provides day to day management of such entity under contract or as managing general partner.
- Affiliate**, with respect to McAfee, means any direct or indirect subsidiary of McAfee, LLC.
- (c) **Cloud Services** means the cloud services that McAfee provides to Company as specified in one or more Grant Letters.
- (d) **Cloud Services Agreement** means the terms and conditions that govern the applicable Cloud Services, available at <http://www.mcafee.com/us/about/legal/cloud-terms-of-service-agreement.aspx>.
- (e) **Confidential Information** means any information (regardless of the form of disclosure or the medium used to store or represent it) of a party (**Disclosing Party**), including trade secrets and technical, financial or business information, data, ideas, concepts or know-how, that:
- (i) is designated as "confidential" or by similar words by the Disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the Disclosing Party in writing within fifteen (15) days of disclosure; or
  - (ii) the receiving party (Recipient) should reasonably have considered to be confidential under the circumstances surrounding disclosure.
- However, Confidential Information does not include any information that:
- (iii) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
  - (iv) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;
  - (v) is or has become disseminated to the public through no fault of the Recipient and without violation of the terms of this Agreement or other obligation to maintain confidentiality; or
  - (vi) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
- (f) **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.
- (g) **DATs** means detection definition files (also referred to as signature files) that contain the codes anti-malware software uses to detect and repair viruses, Trojan horses, and potentially unwanted programs.
- (h) **Distributor** means any independent entity authorized by McAfee to distribute McAfee Products to Resellers or End Users.
- (i) **Derivative Work** 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.
- (j) **Documentation** means any explanatory materials, such as user manuals, training materials, product descriptions, regarding the implementation and use of McAfee Products that is provided by McAfee with the McAfee Products. Documentation is provided in printed, electronic or online form.
- (k) **End User** means the individual or entity that is licensed or authorized to use the Software under this Agreement.
- (l) **Force Majeure Event** means any event beyond a party's reasonable control that, by its nature, could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), acts of God, war, riot, embargoes, acts of civil or military authorities, acts of terrorism or sabotage, shortage of supply or delay in delivery by McAfee's vendors, fire, flood, earthquake, accident, radiation, inability to secure transportation, failure of communications or energy sources, malicious damage, breakdown of plant or machinery, or default of suppliers or sub-contractors.
- (m) **Grant Letter** means any written (electronic or otherwise) confirmation notice that McAfee issues to Company confirming the McAfee Products purchased and applicable Product Entitlement. The Grant Letter identifies the SKU number, quantity, Subscription Period or Support Period, and other access and use details.
- (n) **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 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.
- (o) **Intellectual Property Rights** means all intellectual property or other proprietary rights throughout the world, whether existing under statute, at common law or in equity, now existing or created in the future, including:
- (i) copyright, trademark and patent rights, trade secrets, moral rights, right of publicity, authors' rights;

- (ii) any application or right to apply for any of the rights referred to in paragraph (a); and
  - (iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights, or applications referred to in paragraphs (a) and (b).
- (p) **McAfee** means:
- (i) McAfee, LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased in the United States (except as provided in Subsection **Error! Reference source not found.** below), Canada, Mexico, Central America, South America or the Caribbean;
  - (ii) McAfee Ireland Limited, with its registered offices located at Building 2000, City Gate, Mahon, Cork, Ireland, if the Software is purchased in Europe, the Middle East or Africa;
  - (iii) McAfee (Singapore) Pte Ltd., with a trading address located 101 Thomson Road 29-02/05 United Square, Singapore, 307591, Singapore, if the Software is purchased in Asia (other than China (if the Software is purchased in RMB) or Japan) or the region commonly referred to as Oceania;
  - (iv) McAfee Co. Ltd., with offices located at Shibuya Mark City West, 12-1, Dogenzaka 1-chome, Shibuya-ku, Tokyo, 150-0043, Japan, if the Software is purchased in Japan;
  - (v) McAfee (Beijing) Security Software Co. Ltd., with a trading address located at Room 616, No. 6 North Workers' Stadium Road, Chaoyang District, Beijing, China, if the Software is purchased in China (in RMB); or
  - (vi) McAfee Public Sector LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Software is purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.
- (q) **McAfee Products** means any of McAfee's Software or Support.
- (r) **Open Source Software** means any royalty-free software that requires, as a condition of use, modification or distribution of the software or any other software incorporated into, derived from or distributed with the software (**Derivative Software**), any of the following:
- (i) The source code of the software or any Derivative Software must be released or otherwise made available to third parties;
  - (ii) Permission for creating derivative works of the software or any Derivative Software must be granted to third parties; and
  - (iii) Changes made to the software must be documented and disclosed when the software or any Derivative Software is being distributed.
- Open Source Software includes any software that is subject to: the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, Affero GNU General Public Licenses, or any license listed on [www.opensource.org/licenses](http://www.opensource.org/licenses).
- (s) **Personal Data** or **Personal Information** means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under the General Data Protection Regulation or other applicable data protection laws. to the extent that the definition of 'Personal Data' under the applicable data protection laws is broader than the preceding definitions.
- (t) **Product Entitlement** means the license or subscription types set forth in the Grant Letter and defined at <http://www.mcafee.com/us/resources/legal/mcafee-product-entitlement-definitions.pdf>.
- (u) **Representatives** means a party's Affiliates, permitted resellers, subcontractors, or authorized agents
- (v) **Reseller** means a company that has been authorized by McAfee and has agreed to market and resell McAfee Products.
- (w) **Software** means any software program owned or licensed by McAfee, as the context require, 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 the End User installs during the applicable Support Period.
- Software may also include additional features or functionality that can be accessed with either a subscription or Support agreement to certain Cloud Services as required by the specific offering and subject to the Cloud Services Agreement.
- (x) **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.
- (y) **Support** or **Technical Support** means the services that McAfee (or an Authorized Partner) provides for the support and maintenance of the McAfee Products, as specified in the Technical Support and Maintenance Terms and Conditions.
- (z) **Support Period** means the period for which the End User is entitled to Support, as specified in a Grant Letter.
- (aa) **Technical Support and Maintenance Terms and Conditions** means the McAfee Technical Support and Maintenance for Hardware and Software terms and conditions that detail Support, available at <http://support.mcafee.com/terms>, as amended or updated from time to time.
- (bb) **Updates** means any updates to the content of the Software or Cloud Services, and includes all DATs, signature sets, policy updates, database updates for the Software or Cloud Services, and updates to the related Documentation that are made generally available to End Users after the date of purchase of the Software or of subscription of the Cloud Services as a part of purchased Support. Updates are not separately priced or marketed by McAfee.
- (cc) **Upgrade** means any and all improvements in the Software or Cloud Services that are generally made available to End Users as a part of purchased Support. Upgrades are not separately priced or marketed by McAfee.

15.2 In this Agreement, unless a contrary intention appears:

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

**EXHIBIT B**  
**Maintenance and Support Terms**

**All maintenance terms are provided in the attached URL link -**

[https://support.mcafee.com/webcenter/content/conn/enterprise-content/path/Enterprise%20Libraries/sp/WebContent/ProgramsAndPolicies/Corporate\\_TechSupport\\_Terms.pdf](https://support.mcafee.com/webcenter/content/conn/enterprise-content/path/Enterprise%20Libraries/sp/WebContent/ProgramsAndPolicies/Corporate_TechSupport_Terms.pdf)

f. Such terms shall be incorporated herein by reference.