

# MCAFEE CLOUD SERVICES AGREEMENT

McAfee (as defined below) and Company (as identified in the Grant Letter) agree to the terms of this Agreement (as defined below).

By accessing or using the Cloud Services, Company agrees to this Agreement on behalf of itself and its Users, and represents and warrants that Company has full authority to bind itself and its Users to this Agreement. If Company does not agree to this Agreement, Company may not access or use the Cloud Services, and Company must immediately notify McAfee to cancel the Cloud Services identified in the Grant Letter without accessing or using the Cloud Services. If Company is accepting this Agreement on behalf of another person or other legal entity, Company represents and warrants that Company 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 Section 15 or elsewhere in this Agreement. The interpretation clause in Section 15 sets out the rules of interpretation for this Agreement.

## 1. RIGHT OF USE AND RESTRICTIONS

- 1.1 **Right to Access and Use:** Subject to the terms of this Agreement, McAfee grants Company a non-exclusive, non-transferable, worldwide right to access and use the Cloud Services described in the Grant Letter during the applicable Subscription Period solely for Company's internal business purposes. Use of the Cloud Services depends on the types of subscriptions purchased (e.g. Users) and is subject to the Product Entitlement definitions on the applicable date of Company's Grant Letter. Company must have an active subscription to the Cloud Services, or have an active Support agreement for the Cloud Services, as applicable, to continue to receive access to the Cloud Services. User-based subscriptions may not be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Cloud Services.
- 1.2 **Affiliates:** Company may permit its Affiliates to use the Cloud Services in accordance with this Agreement, provided that each Affiliate agrees in writing to be bound by this Agreement, and Company is responsible and fully liable for each Affiliate's compliance with and breach of this Agreement.
- 1.3 **Access Software:** If McAfee provides Software to Company to access the Cloud Services, Company must access the Cloud Services with that Software. Such Software is provided to Company subject to the EULA, which applies with respect to any Software. Any conflict or inconsistency between the EULA and this Agreement will be resolved in favor of the EULA if it relates to Software, and this Agreement if it relates to Cloud Services or other matters.
- 1.4 **Managing Parties:** If Company enters into a contract for a third party to manage Company's information technology resources (**Managing Party**), Company may authorize the Managing Party to use the Cloud Services on Company's behalf, provided that:
  - (a) the Managing Party only uses the Cloud Services for Company's internal business operations;
  - (b) the Managing Party agrees in writing to be bound by this Agreement;
  - (c) Company provides McAfee with written notice that a Managing Party will be using the Cloud Services on Company's behalf; and
  - (d) Company remains responsible for all use of the Cloud Services by the Managing Party.
- 1.5 **Restrictions:** Company will not and will not allow third parties to:
  - (a) license, sublicense, access, use, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Cloud Services available to any third party;
  - (b) modify, decompile, reverse engineer or copy the Cloud Services, or any of their components;
  - (c) access or use the Cloud Services to build or support any products or services competitive with the Cloud Services;
  - (d) use the Cloud Services to conduct fraudulent activities;
  - (e) attempt to gain unauthorized access to the Cloud Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to McAfee, its provision of the Cloud Services, or to others;
  - (f) impersonate or misrepresent an affiliation with a person or entity;
  - (g) access or use the Cloud Services for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without McAfee's express written permission;
  - (h) falsely identify itself or provide any false information to establish any account that will be used to gain access to and/or use of the McAfee Products;
  - (i) use the Cloud Services to initiate or propagate Malware;
  - (j) use the Cloud Services as an HTTP server that allows third-party relay or proxy of web traffic; or
  - (k) use the Cloud Services in a manner that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement.

Each of (a) to (k) is a **Prohibited Use**. A Prohibited Use is a material breach of this Agreement in McAfee's sole discretion.

- 1.6 **Right to Use Company Data**
  - (a) Company grants McAfee a non-exclusive, royalty-free license to access and use the Company Data as necessary during the Subscription Period:
    - (i) for McAfee to provide the Cloud Services and Support to Company during the Subscription Period; and
    - (ii) for administering this Agreement, including assuring that the right number of subscriptions and/or user accounts have been issued.
  - (b) Company grants McAfee a non-exclusive, perpetual right and license to use, reproduce and disclose product, support, or services-related information, Company Data (excluding Personal Data and Company Confidential Information) and material that is aggregated, anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual or to Company for product improvement (including content synchronization, device tracking, troubleshooting), internal research to enhance McAfee's understanding of Malware, threats, and vulnerabilities (including detecting and reporting threats and vulnerabilities on Company's and Users' computer endpoints and networks) to improve overall security for users generally and in accordance with McAfee's Privacy

Policy available at <https://www.mcafee.com/us/about/legal/privacy.aspx>. This includes compiling statistical and performance information related to the provision and operation of the Cloud Services and making such information publicly available. McAfee retains all rights in such aggregated and anonymous data.

## 2. COMPANY OBLIGATIONS

2.1 **Company Access:** Company is responsible for all activity occurring under Company's Cloud Services and Support accounts. Company will provide McAfee with all information and assistance required to supply the Cloud Services or enable Company's use of the Cloud Services. Company will immediately notify McAfee of any unauthorized account use or other suspected security breach, or unauthorized use, copying or distribution of Cloud Services, Documentation or Company Data.

### 2.2 Company Data

- (a) Company represents and warrants that it:
  - (i) has the legal rights and applicable consents to provide Company Data to McAfee;
  - (ii) has provided any required notices and has obtained any consents and/or authorizations (including any required from Users) related to its use of the McAfee Products and McAfee's processing of Company Data (including any Personal Data); and
  - (iii) will comply with all applicable laws for collecting, processing, and transferring Company Data to McAfee.
- (b) Company has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Company Data. The Cloud Services rely on Company Data as supplied by Company, and McAfee is not liable for the content of Company Data. Except as required under applicable law, McAfee does not assume any duty or obligation to correct or modify Company Data. Except as provided in this Agreement, Company retains all right, title and interest in and to Company Data.

2.3 **System Administrator:** As needed, Company will provide McAfee contact information for Company's system administrator, who is authorized to provide the information required to configure and manage the Cloud Services (System Administrator). Depending on the Cloud Services purchased, McAfee may provide Company with a confidential access code to the administration tool, which may only be accessed by the System Administrator.

2.4 **Updated Information:** Company must provide current and complete Users' information as necessary for McAfee to manage Company's account.

## 3. TECHNICAL SUPPORT SERVICE

McAfee will provide Support to Company in accordance with the applicable Service Schedule. The Support terms may be updated from time to time, however McAfee will not materially reduce the level of performance, functionality, or availability of the Support during the Subscription Period.

## 4. DATA PRIVACY AND PROTECTION

- 4.1 As Company Data may originate from various jurisdictions and as McAfee would be unaware of those jurisdictions in the provision of the McAfee Products, Company is solely responsible for ensuring that the parties enter into any necessary additional agreements as required by applicable data protection laws. To the extent Company Data includes Personal Data of residents of the European Economic Area (the EEA), McAfee's processing of such data will comply with the applicable version of the McAfee Data Processing Agreement (DPA) (including if requested the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries approved by EC Commission Decision of 5 February 2010) found on McAfee's website, if requested by Company and executed by the parties. Upon execution, the DPA is incorporated herein by reference. In the event of any conflict between the terms of the DPA and this Agreement, the Documentation, or McAfee's Privacy Policy, the terms of the DPA will take precedence insofar as the Personal Data of residents of the EEA is concerned.
- 4.2 McAfee will comply with McAfee's Privacy Policy and the applicable technical and organizational measures set forth in the Documentation and the DPA.
- 4.3 Without prejudice to Sections 4.1 and 4.2 above, Company is responsible for: (a) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Company Data, including any Malware contained in the Company Data, and (b) Company's and its Users' use of the McAfee Product in a manner that is inconsistent with this Agreement.
- 4.4 To the extent Company discloses or transmits Company Data to a third party, McAfee is no longer responsible for the security, integrity or confidentiality of such content outside of McAfee's control.

## 5. TERM; TERMINATION; SUBSCRIPTION PERIODS

5.1 **Term:** This Agreement will continue until terminated in accordance with this Agreement.

5.2 **Termination for Cause.** Either party may terminate this Agreement immediately for cause if:

- (a) the other party breaches this Agreement and has failed to remedy a remediable breach within thirty (30) days of receipt of a notice from the first party specifying the breach and requiring it to be remedied, or if the breach is incapable of remedy;
- (b) the other party or its property is subject to insolvency or receivership procedures;
- (c) the other party becomes insolvent or unable to pay its debts as they mature;
- (d) the other party makes an assignment for the benefit of creditors; or
- (e) the other party becomes the subject of any other proceeding under any bankruptcy, insolvency or debtor's relief law.

5.3 **End-of-Life:** Company's right to access and use the Cloud Services, and any features of the Cloud Services, 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 Cloud Service or any feature of a Cloud Service (as described in the End-of-Life Policy), Company's right to access and use the applicable Cloud Service or feature will terminate.

5.4 **Suspension or Termination of Cloud Service by McAfee:** McAfee may suspend or terminate the Cloud Services:

- (a) immediately if McAfee considers it necessary to prevent or terminate any actual or suspected Prohibited Use; or
- (b) upon notice to Company if:
  - (i) Company commits a material breach of this Agreement;
  - (ii) McAfee receives notice from Authorized Partner that Company is in material breach of the Agreement (including Company's

- Agreement with Authorized Partner);
- (iii) McAfee reasonably determines that the volume of data being transmitted or processed through the Cloud Services under Company's account is significantly greater than the average use or may cause degradation of the Cloud Services for Company or other customers; or
  - (iv) there is a threat to the security and integrity of the hosted environment or Company Data.

Suspension or termination of Cloud Services by McAfee will be without prejudice to any rights or liabilities accruing before or during the suspension, including Company's obligation to pay fees.

- 5.5 **Termination Obligations.** After termination of a Subscription Period for a particular Cloud Service, Company agrees that McAfee has no obligation to retain Company Data for that Cloud Service, which may be permanently deleted as part of McAfee's record and information management and in accordance with applicable laws. If any Company Data is stored by the Cloud Service, Company is solely responsible for retrieving that Company Data.

## 6 PAYMENTS; TAXES; AUDIT

- 6.1 **Payments:** Unless Company is purchasing the Cloud Services 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.
- 6.2 **Transaction Taxes:** If Company purchases the Cloud Services 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.
- 6.3 **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.
- 6.4 If Company purchases the Cloud Services 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 Section 6.2 and 6.3 do not apply as between McAfee and Company.
- 6.5 **Income Taxes:** Each party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.
- 6.6 **Audit:** McAfee may request, and Company must provide within thirty (30) days from the request date, a system-generated report verifying Company's access to and use of the Cloud Services (**System Report**). Company acknowledges that the System Report is based on technological features in the Cloud Services to verify access and use verification (including User counts). If the Cloud Services do not contain technological features that provide use verification, Company will provide to McAfee an accurate Cloud Services access and use verification report for the Cloud Services within thirty (30) days from McAfee's request. McAfee will only request the System Report (or Company's prepared Cloud Services access and use 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 Cloud Services access and use verification report identifies that Company is out of compliance with this Agreement, Company will be required to purchase the additional subscriptions and pay any fees associated with the subscriptions and/or Support. McAfee may also charge an out-of-compliance fee.

## 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 in Section 7.2, 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 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 Company will immediately 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.
- 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:** Company agrees that McAfee has the unrestricted right to use suggestions and feedback provided by Company regarding the Cloud Services and other products and services of McAfee and its Affiliates, without notice to, payment to or consent from Company, and that such suggestions and feedback will be the Confidential Information of McAfee, and not Company.

## 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 **Ownership:** The McAfee Products, Documentation and the software underlying the Cloud Services are strictly confidential to McAfee. McAfee (or its licensors) own exclusively and reserve all right, title and interest in and to the McAfee Products, Documentation and the software underlying the Cloud Services, including all related Intellectual Property Rights as well as any Derivative Works. 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.
- 8.2 **Reserved Rights:** Company may not exercise any right, title and interest in and to the McAfee Products, Documentation, the software underlying the Cloud Services or any related Intellectual Property Rights, except for the limited access and usage rights granted to Company in this Agreement. This Agreement is not an agreement of sale, and this Agreement does not transfer any title, Intellectual Property Rights or ownership rights to the McAfee Products, Documentation, or the software underlying the Cloud Services to Company. Company acknowledges and agrees that the McAfee Products, Documentation, and the software underlying the Cloud Services, and all ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the foregoing, and all other improvements, revisions, corrections, modifications, enhancements, releases, detection definition files (or DATs, also referred to as signature files, being the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, content, and other updates in, of, or to the Cloud Services or the software underlying the Cloud Services, all Derivative Works based on any of the foregoing, and all copies of the foregoing are trade secrets and reserved to and proprietary property of McAfee, having great commercial value to McAfee.

## 9 WARRANTIES; EXCLUSIONS; DISCLAIMERS

- 9.1 **Warranty.** McAfee warrants that during the Subscription Period, the Cloud Services will perform substantially in accordance with the associated Documentation. Company's sole and exclusive remedy for McAfee's breach of the foregoing warranty is, at McAfee's option, the repair or replacement of the Cloud Service, or for McAfee to provide a credit for the period in which the Cloud Service did not materially comply. This warranty is conditioned upon Company providing McAfee prompt written notice of the Cloud Services' non-conformance and using the Cloud Service as provided in this Agreement.
- 9.2 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS SECTION, TO THE EXTENT ALLOWED BY APPLICABLE LAW, MCAFEE EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. MCAFEE MAKES NO WARRANTY OR REPRESENTATION THAT THE CLOUD SERVICE: (A) WILL BE UNINTERRUPTED, COMPLETELY SECURE, ERROR-FREE, FAILSAFE OR FREE OF VIRUSES; (B) WILL MEET COMPANY'S BUSINESS REQUIREMENTS OR OPERATE WITH COMPANY'S CURRENT SYSTEMS; (C) WILL COMPLY WITH ANY PARTICULAR LAW; OR (D) WILL PROVIDE COMPLETE PROTECTION AGAINST ANY SECURITY THREATS VULNERABILITIES. NO DATA TRANSMISSION OVER THE INTERNET CAN BE GUARANTEED TO BE SECURE. MCAFEE DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY INTERCEPTION OR INTERRUPTION OF ANY COMMUNICATIONS THROUGH THE INTERNET, NETWORKS, OR SYSTEMS OUTSIDE MCAFEE'S CONTROL. COMPANY IS RESPONSIBLE FOR MAINTAINING THE SECURITY OF ITS NETWORKS, SERVERS, APPLICATIONS AND ACCESS CODES. CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MCAFEE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, LOSS OF COMPANY DATA OR DAMAGES RESULTING FROM THOSE PROBLEMS. COMPANY WILL NOT MAKE ANY REPRESENTATION OR OTHER STATEMENT OR UNDERTAKE ANY ACT OR OMISSION INCONSISTENT WITH THIS SECTION.
- 9.3 **High Risk Systems Terms:** THE MCAFEE PRODUCTS MAY FAIL AND ARE 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, DEFEND AND HOLD HARMLESS MCAFEE, ITS AFFILIATES AND REPRESENTATIVES FROM ALL CLAIMS, SUITS, DEMANDS, AND PROCEEDINGS ALLEGING, CLAIMING, SEEKING, OR ASSERTING, ANY LIABILITY, LOSS, OBLIGATION, RISK, COST, DAMAGE, AWARD, PENALTY, SETTLEMENT, JUDGMENT, FINE OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM OR IN CONNECTION WITH COMPANY'S USE OF THE MCAFEE PRODUCTS 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 THE HIGH RISK SYSTEM DEPENDS OR DEPENDED ON THE FUNCTIONING OF THE CLOUD SERVICES, OR THAT THE FAILURE OF ANY MCAFEE PRODUCTS CAUSED A HIGH RISK SYSTEM TO FAIL.
- 9.4 **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.

**10 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 WHICH CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW.

## 11 INDEMNIFICATION

**11.1 Company Indemnification Obligations.** Company will unconditionally indemnify, and defend McAfee, its Affiliates, and their officers, directors, employees, contractors and agents (each a **McAfee Indemnified Party**) against any claims, liabilities and expenses (including court costs and reasonable attorneys' fees) that a McAfee Indemnified Party incurs as a result of or in connection with:

- (a) any third-party claims arising from:
  - (i) Company Data, including without limitation Company's failure to follow applicable laws or obtain all necessary consents related to Company Data;
  - (ii) Company's use of the Cloud Services in a manner not expressly permitted by this Agreement;
  - (iii) McAfee's compliance with any technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
  - (iv) any claims, costs, damages and liabilities whatsoever asserted by any Company Representative; or
  - (v) any violation by Company of applicable laws or regulations; and
- (b) any reasonable costs and attorneys' fees required for McAfee to respond to a subpoena, court order or other official government inquiry regarding Company Data or Company's use of the Cloud Services.

**11.2 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 Cloud Services alone and not in combination with anything else, or solely a combination of the Cloud Services.
- (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 or resulting from:
  - (i) Company's breach of this Agreement;
  - (ii) technology, designs, instructions or requirements provided by Company or a third party on Company's behalf;
  - (iii) modifications to the Cloud Services or use of the Cloud Services outside the scope of the applicable Documentation;
  - (iv) use of non-current or unsupported versions of the Cloud Services;
  - (v) Company Data;
  - (vi) Services Company provides using or based upon the Cloud Services; or
  - (vii) the Cloud Services 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 McAfee Product that is subject to a claim:
  - (i) procure Company with the right to continue using the Cloud Service;
  - (ii) replace or modify the Cloud Service or the software underlying the Cloud Service so it is non-infringing; or
  - (iii) upon Company's removal of the Software and Company's access to the Cloud Services from Company's systems, refund the value of the purchase price Company paid for the infringing Cloud 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 other party 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 however 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 Section 11 states the parties' entire indemnification obligations and Company's exclusive remedy for claims involving infringement of Intellectual Property Rights.

## 12 EVALUATION PRODUCTS AND FREE SERVICES

**12.1 Generally:** If Company requests an evaluation of Cloud Services (**Evaluation Product**) or Free Services, the provisions of this section will apply and prevail over any other conflicting terms of this Agreement. Company's use of an Evaluation Product is limited to thirty (30) days (**Evaluation Period**) unless agreed otherwise in writing by McAfee. During the Evaluation Period, Company may access and use the Evaluation Products solely for Company's internal evaluation to decide whether to purchase the right to use the Evaluation Products.

**12.2 No Support Obligation:** McAfee has no obligation to provide any Support for Evaluation Products or Free Services. Company acknowledges that the Evaluation Products and Free Services may contain errors, defects or other problems that could cause system or other failures, security breaches, interruptions and data loss.

**12.3 Disclaimer of Warranties**

- (a) McAfee's indemnification obligations under Section 11 do not apply to Evaluation Products and Free Services. Evaluation Products and Free Services 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 Products and Free Services and disclaims all other obligations and liabilities, or express and implied warranties regarding the Evaluation Products and Free Services, including quality, conformity to any representation or description, performance, merchantability, fitness for a particular purpose, non-infringement; or that the Evaluation Products and Free Services will be free from errors or defects. Company assumes all risk of use of Evaluation Products and Free Services. 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.

- (b) Company acknowledges that McAfee:
  - (i) has not promised or guaranteed to Company that Free Services will be announced or made available to anyone in the future;
  - (ii) has no express or implied obligation to Company to announce or introduce Free Services; and
  - (iii) is not obligated to introduce a product similar to or compatible with Free Services or any updates to any Evaluation Products and Free Services.

#### 12.4 Free Services

- (a) McAfee is not obligated to finally release any version of the Free Services. Company will report to McAfee unusual, unplanned, or out of the ordinary events observed in a Free Services. Access or use of a Free Services is restricted to Company's internal performance evaluation of the Free Services.
- (b) For Free Services that are features or functionality included in a paid subscription for which McAfee no longer charges or which McAfee offers to Company at no charge, the Subscription Period for the Free Services continues as long as McAfee makes the features or functionality available to Company.
- (c) McAfee may, at its discretion provide Free Services to Company before, during or after Company's paid subscription to Cloud Services, and any use is subject to the terms of this Agreement then in effect as long as the Free Services are made available to Company.
- (d) Any updates or end-user assistance provided for Free Services are provided at McAfee's sole discretion and may be discontinued at any time.
- (e) McAfee may elect, at its sole discretion, to discontinue certain Free Services or particular features of the Free Services at any time (**Free Services Termination**). Free Services are specifically excluded from McAfee's End-of-Life-Policy. Instead, McAfee will make commercially reasonable efforts to provide thirty (30) days' prior notice to Company of a Free Services Termination.
- (f) McAfee has no obligation to retain any Company Data or other Company information submitted or collected through the Free Services. McAfee may delete any Company Data and other Company information at its own discretion and without prior notice to Company.

### 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 Cloud Services or technical data (or any part of Cloud Services or technical data) or system or service incorporating any Cloud 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 governmental entity that may have jurisdiction over export or transmission. Company will not use, transfer or access any Cloud 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 Company acknowledges and agrees that certain McAfee Products containing encryption may require authorization from the U.S. and other applicable 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

- 14.2 **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.
- 14.3 **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.
- 14.4 **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.

- 14.5 **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 14.5(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's Representative; or
    - (iv) acts or omissions of third parties (unless directed by McAfee).
- 14.6 **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.
- 14.7 **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.
- 14.8 **Entire Agreement, Order of Precedence and Amendments**
- (a) This Agreement and any Schedules constitute the entire understanding between McAfee and Company relating to its subject matter and supersede 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 Company, whether or not expressly rejected by McAfee.
  - (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:
    - (i) The Agreement will prevail over any Service Schedule and Grant Letter; and
    - (ii) The Service Schedule will prevail over the Grant Letter.
  - (c) 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 <https://www.mcafee.com/us/about/legal/cloud-terms-of-service-agreement.aspx>
- 14.9 **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 McAfee, "Attention Legal Department", to the applicable address listed in Section 15.1(s), or Company, at the contact information Company provided when purchasing or registering for the Cloud 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.
- 14.10 **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.
- 14.11 **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 or acquisition, will be null and void.
- 14.12 **Notice to U.S. Government Users:** The Cloud Services are considered "commercial computer software" and "commercial computer software documentation," under DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Cloud Services by the United States Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement.
- 14.13 **Community Forum:** Company and other McAfee customers may exchange ideas and technical insight regarding the McAfee Products on the community support page located at: <https://community.mcafee.com/community/business/data/cloud-visibility>. McAfee does not endorse, warrant or guarantee any information posted on this site and any use of the information is taken at Company's sole risk.
- 14.14 **Survival:** The following sections, together with any other terms necessary for the interpretation or enforcement of this Agreement, will survive termination of this Agreement: 5.5 (Termination Obligations), 7 (Confidentiality), 8 (Intellectual Property Rights), 9 (Warranties; Exclusions;

Disclaimers), 10 (Limitation of Liability), 11 (Indemnification), 14.6 (Governing Law), 14.7 (Jurisdiction), 15 (Definitions and Interpretation) and this Section 14.14 (Survival).

## 15 DEFINITIONS AND INTERPRETATION

15.1 In this Agreement:

- (a) **Affiliate**, 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.
- (b) **Agreement** means this Cloud Services Agreement, the Service Schedules and any materials available on the McAfee website that are specifically incorporated by reference.
- (c) **Authorized Partner** means any of McAfee's Distributors, Resellers or other business partners.
- (d) **Business Day** means any day other than a Saturday, Sunday, statutory or public holiday in the place where the McAfee Products are provided or the Professional Services are performed.
- (e) **Cloud Services** means the cloud services that McAfee provides to Company as specified in one or more Grant Letters and that are subject to the applicable Service Schedule.
- (f) **Company Data** means any data provided by Company to McAfee by and through the Cloud Services and applicable Support. Company Data may include Personal Data.
- (g) **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.
- (h) **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:
  - (iv) 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
  - (v) 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:
  - (vi) written records demonstrate was lawfully acquired by or previously known to the Recipient independent of the Disclosing Party;
  - (vii) is received from a third party without restrictions on its use or disclosure and not by inadvertence or mistake;
  - (viii) 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
  - (ix) is created independently by the Recipient without breach of this Agreement, including any obligation of confidentiality owed to the Disclosing Party.
- (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, user guides, product descriptions, regarding the implementation and use of the Cloud Services that are provided by McAfee. Documentation is provided in printed, electronic or online form.
- (k) **End User License Agreement** or **EULA** means the standard McAfee End User License Agreement available at <https://www.mcafee.com/hk/about/legal/end-user-license-agreements.aspx>, which governs Company's use of any Software.
- (l) **Free Services** means any features or functionality included in a paid subscription for which McAfee no longer charges or which McAfee offers to Company at no charge, in McAfee's sole discretion, or other features or functionality that McAfee makes available to Company without charge, that is labeled as "Pre-Release," "Limited Release," "Beta" or otherwise identified by McAfee as experimental, untested, or not fully functional, and which is not a time-limited trial for Company's evaluation purposes.
- (m) **Government Official** means any officer, employee or person acting in an official capacity for any government department, agency or instrumentality, including state-owned or -controlled companies, and public international organizations, as well as a political party or political party official or candidate for political office.
- (n) **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.
- (o) **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.



- (p) **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.
- (q) **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 subsection 15.2(q)(i); and
  - (iii) all renewals, extensions, continuations, divisions, restorations or reissues of the rights or applications referred to in paragraphs (i) and (ii).
- (r) **Malware** means applications, executable code or malicious content that McAfee considers to be harmful.
- (s) **McAfee** means:
  - (i) McAfee, LLC, with offices located at 2821 Mission College Blvd., Santa Clara, California 95054, USA, if the Cloud Services are purchased in the United States (except as provided in Subsection (vi) 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 Cloud Services are 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 Cloud Service are purchased in Asia (other than China (if the Cloud Services are 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 Cloud Services are 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 Cloud Services are 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 Cloud Services are purchased by the U.S. Government, State or Local Government, Healthcare organization or Educational institution within the United States.
- (t) **McAfee Products** means any Cloud Services or Support.
- (u) **Personal Data** means any information relating to an identified or identifiable individual or is otherwise defined as 'Personal Data' under other applicable data protection laws.
- (v) **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>.
- (w) **Representatives** means a party's Affiliates, permitted resellers, subcontractors, employees, or authorized agents.
- (x) **Service Schedules** means the applicable Cloud Services-specific terms and conditions specified in Service Schedule 1 for the McAfee Cloud Services, and Service Schedule 2 for the McAfee Skyhigh Cloud Services both attached to this Agreement and incorporated by reference, as amended from time to time.
- (y) **Software** means any software program owned or licensed by McAfee, as the context requires, in object code format, provided by McAfee to Company which may be required in order for it to access the Cloud Services.
- (z) **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.
- (aa) **Subscription Period** means the period for which Company has purchased the right to receive the Cloud Services or the time period for which Company has purchased the right to receive Support, as applicable.
- (bb) **Support** means the technical support services that McAfee provides for the support and maintenance of the Cloud Services, as specified in the applicable Service Schedule.
- (cc) **Support Period** means the period for which Company is entitled to Support, as specified in a Grant Letter.
- (dd) **User** means a unique individual whom Company has authorized to use the Cloud Services pursuant to Company's access rights under this Agreement, including Company employees, Company Affiliates, subcontractors, authorized agents and Managed Parties.

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 e 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.

## Service Schedule 1

### McAfee Cloud Services Additional Terms

This Service Schedule 1 (McAfee Cloud Services Additional Terms) applies to the McAfee brand of Cloud Services products only.

1. **Service Level Agreement:** McAfee will provide the Cloud Services in accordance with the terms of the Service Level Agreement located at [https://trust.mcafee.com/saas\\_sla.pdf](https://trust.mcafee.com/saas_sla.pdf).
2. **Support for McAfee Cloud Services:** Support for the McAfee Cloud Services will be provided subject to this Agreement and the McAfee Technical Support and Maintenance Terms, available at <https://support.mcafee.com/terms>, which are incorporated by reference.

**Service Schedule 2**  
**McAfee Skyhigh Security Cloud Service Additional Terms**

This Service Schedule 2 (McAfee Skyhigh Security Cloud Services Additional Terms) applies to the McAfee Skyhigh Security Cloud brand of products only.

1. **Return of Company Data.** Following any termination or expiration of this Agreement (other than as a consequence of McAfee's termination for Company's breach of any material provision hereof), Company will have the right to access and use the Cloud Services for a period of 30 days (the "**Wind-down Period**"). Additionally, within 30 days after the effective date of termination, McAfee will make available to Company for download, a file of the Company Data then in McAfee possession, custody or otherwise under its control (in comma separated value (.csv) format along with attachments in their native format). After the end of such Wind-down Period, McAfee will have no obligation to maintain or provide any Company Data and will thereafter, unless legally prohibited, be entitled to, delete all Company Data in its systems or otherwise in its possession, custody or under its control.
2. **System Availability.** McAfee shall make commercially reasonable efforts to provide 24 hours, 7 days a week availability and access to the Service, and will continuously and proactively monitor the Cloud Services and its related environment. Under exceptional circumstances, McAfee may experience the need for emergency maintenance, during which time, the Cloud Services will be unavailable to Company ("Service Outage"). McAfee will use reasonable efforts to notify Company a minimum of fifteen (15) minutes prior to a Service Outage. Company will notify McAfee of service interruptions or delays that may be known to Company. Company will provide access to its designated contacts to assist McAfee with correcting any Service Outage problems in a timely manner. McAfee will also provide updates to Company until the Service Outage has been corrected. Upon learning of any Service Outage, McAfee will correct the Service Outage and restore Services availability. McAfee shall make commercially reasonable efforts to provide 99.5 percent (99.5%) availability of the Cloud Services, as measured monthly.
3. **Support.** McAfee will provide Support for the Cloud Services in accordance with the following:

<b>Support and Maintenance</b>	
<b>Support Requests</b>	1-866-727-8383
Phone, Email & Web	Available 24/7
<b>Technical Support</b>	
Office hours (critical and non-critical issues)	Available 24/7
Availability for critical issues	Available 24/7
Response time	(See below)
<b>Service Support</b>	
Upgrade notifications	Yes
Remote diagnostics	Yes
<b>Online Resources</b>	
Documentation	Yes
FAQ	Yes

Company and McAfee will jointly use the following definitions to document and respond to errors or deficiencies that may exist. If Company determines that an error or deficiency exists in the programs supported by the subscription fees under this Agreement, Company will provide written notification to McAfee of such error or deficiency, along with supporting data and programs that document such error or deficiency. McAfee will respond in accordance with the following severity levels

**Critical - Severity 1 Error:**

A "Severity 1 Error" will mean that the Cloud Services is non-operational and no Users can access the system, or the functionality is significantly decreased, or back-up or other security of data can no longer be performed. The defect affects mission-critical systems or information in the production environment. This may include any defect related to Company or personal safety, system availability, overall data integrity or ability to serve Company.

"Severity 1 Error" events will require immediate resolution by McAfee. McAfee must start the correction of "Severity 1 Errors no later than one (1) hour following notification by Company. McAfee will work to correct Severity 1 Errors on a 24x7 basis until resolution. McAfee Support personnel as well as Company's personnel may be required to sustain a twenty-four (24) hour per day effort to determine the root cause of the problem or until circumvention or resolution is provided. McAfee will provide regular updates informing Company of the progress to remedy the reported problem. For Severity 1 Errors only, telephone support is available to report irregularities twenty-four (24) hours per day seven (7) days per week.

**High - Severity 2 Error:**

A "Severity 2 Error" will mean that the Cloud Services is operational with functional limitations or restrictions but there is minimal business impact. The error has a large impact on the functionality of the application, but does not require immediate release into the production environment.

McAfee must start the correction of "Severity 2 Error" no later than four (4) hours following notification by Company. The correction of "Severity 2 Error"

must commence by the start of the next Business Day following notification, if such notification has been received at the latest two (2) hours before end of a Business Day. McAfee will work to correct Severity 2 Errors during normal business hours. McAfee will provide regular updates informing Company of the progress to remedy the reported problem. McAfee will use reasonable efforts to correct such errors within five (5) Business Days.

**Medium - Severity 3 Error:**

A "Severity 3 Error" will mean these Cloud Service is operational with functional limitations or restrictions that are not critical to the overall system operation. The error has a moderate impact on the functionality of the application. However, the application remains usable by all groups.

McAfee will work to correct Severity 3 Errors during normal business hours. McAfee will use reasonable efforts to correct such errors within thirty (30) business days.

**Low - Severity 4 Error:**

A "Severity 4 Error" will mean the Cloud Service is operational with problems or errors, which have little impact on system operations. Severity 4 Errors will include documentation errors. The error has a minor impact on the functionality of the application.

"Severity 4 Error" events are normally corrected in the next maintenance release of the Cloud Service.