

McAfee Enterprise – PO Terms and Conditions

1. **DEFINITIONS.** Capitalized terms used in these Terms and Conditions have the meanings set forth in Attachment 1.

2. **TERMS.**

2.1 Supplier's acceptance of this PO is limited to acceptance of the express terms contained in this document and does not include any additional or different terms proposed by Supplier or any attempt by supplier to vary the terms hereof.

2.2 Unless specifically agreed to in writing by Buyer's authorized purchasing representative, Buyer objects to, and is not bound by, any term or condition in Supplier's quotation, invoice or other Supplier preprinted form that differs from or adds to this PO. No auto renewal terms of any kind shall be deemed incorporated into these PO Terms. Supplier's commencement of performance, or acceptance of this PO in any manner, will conclusively evidence acceptance of this PO as written.

2.3 Supplier acknowledges that it is providing the Products and/or Services on a non-exclusive basis and nothing contained in this PO shall or shall be deemed or interpreted as guaranteeing a certain volume of purchasing by the Buyer from the Supplier. Furthermore, the Buyer reserves the right to purchase the products/services from third parties that supply similar products without notice or liability to the Supplier.

3. **PRICING.**

3.1 The price charged to Buyer for any Product(s) or Service(s) shall always be Supplier's lowest price charged to any customer for any similar product or equivalent service regardless of any special terms, conditions, rebates, or allowances of any nature. Supplier bears the burden of proof by clear and convincing evidence that products being compared are not "similar" or services being compared is not "equivalent."

3.2 If Supplier sells or licenses any similar product or equivalent service to any customer at a price less than that set forth within the applicable Statement of Work or another document executed by the parties, Supplier must immediately notify Buyer of this lower price, and Supplier shall adjust its price to the lower price for any un-invoiced Products and for all outstanding and future invoices for such Product or Service, and shall rebate to Buyer an aggregate amount equal to the difference in the price paid by Buyer and the lower price for any invoices already paid by Buyer for such Products or Services.

3.3 Each of the above price adjustments and the rebate shall be calculated from the date Supplier first sells the similar product or equivalent service at the lower price.

4. **TAXES.**

4.1 All prices and fees are exclusive of any applicable taxes, including, but not limited to, sales/use taxes, transaction privilege taxes, gross receipts taxes, and other charges such as duties, customs, tariffs, imposts, and government imposed

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surcharges now or hereafter imposed on the sale, import or export of the Products or Services (“**Transaction Taxes**”).

- 4.2 Transaction Taxes shall be stated separately on Supplier's invoice. Supplier shall remit all such charges to the appropriate tax authority unless Buyer provides sufficient proof of tax exemption. Buyer shall not be responsible for any Transaction Taxes (or interest or penalty thereon) arising on account of the negligent failure of Supplier to properly invoice, report, or remit any Transaction Taxes. Supplier will timely report and remit Transaction Taxes imposed under this Purchase Order to the appropriate taxing authorities.
- 4.3 Each party is responsible for its own respective income taxes or taxes based upon gross revenues, including, but not limited to, business and occupation taxes.
- 4.4 Notwithstanding anything to the contrary in this PO, Buyer shall have the right to deduct or withhold any portion of an amount payable under this PO as required by applicable law (“**Withholding Taxes**”) and will pay to Supplier the remaining net amount after the deduction of Withholding Taxes. In the event Buyer determines that such deduction or withholding is required by applicable law, Buyer shall remit the Withholding Taxes to the applicable taxing authority and provide Supplier with any receipt received by Buyer from the applicable taxing authority or other record evidencing the Withholding Taxes have been remitted to the taxing authority.
- 4.5 Supplier and Buyer shall cooperate with each other to enable the other to more accurately determine its own tax liability and to minimize such liability to the extent permitted by applicable law. Supplier shall in a timely manner notify Buyer of any tax proceeding (including an examination, assessment, appeal, or litigation) that could result in additional taxes for Buyer. Buyer shall have a right to participate in any such tax proceeding.

5. INVOICING AND PAYMENT.

- 5.1 Payment is made when Buyer's check is mailed; credit card number is provided to Supplier or EDI funds transfer initiated. Buyer shall make payment, without offset, within sixty (60) days from submission of Buyer's valid receipt of the proper original invoice or Buyer's receipt of Products, whichever is later. Supplier will not submit an invoice for Products or Services prior to the shipment date of such Products or completion of such invoiced Services.
- 5.2 Original invoices or packing lists must be submitted to the Buyer's Accounts Payable Department (refer to the mailbox included in the PO comments) and must include to be valid a: PO number, line item number, part number, complete bill to address, description of Products, quantities, unit price and extended totals.
- 5.3 All costs forwarded to Buyer for reimbursement of expenses agreed under the terms of this Purchase Order shall be in compliance with Buyer policies, without markup and net of any reclaimable Value Added Taxes (“**VAT**”) incurred on such expenses. Buyer's payment shall not constitute acceptance.
- 5.4 Supplier agrees to invoice Buyer no later than one hundred eighty (180) days after

shipment of Products or availability of Software for download. Buyer will not be obligated to make payment against any invoices submitted after such period. Buyer reserves the right to request separate billing in certain jurisdictions.

6. TERMINATION FOR CONVENIENCE.

Buyer may terminate this Purchase Order or any part thereof, at any time for its sole convenience by giving written notice of termination to Supplier. Upon Supplier's receipt of such notice, Supplier shall, unless otherwise specified in such notice, immediately stop all work hereunder and give prompt written notice to and cause all of its suppliers or subcontractors to cease all related work.

7. FORCE MAJEURE.

7.1 Except for McAfee's payment obligations to Supplier, neither party will be liable for any delay in performing, or for failing to perform, its obligations under this Purchase Order due to causes beyond its reasonable control such as acts of God, fire, theft, war, riot, epidemics, pandemics, or civil disturbances, terrorism, embargoes or acts of civil or military authorities.

7.2 If delivery is to be delayed by such contingencies, Supplier shall immediately notify Buyer in writing and Buyer may either (a) extend time of performance, or (b) terminate the uncompleted portion of the PO at no cost to Buyer.

8. DELIVERY AND SCHEDULING.

8.1 Supplier shall notify Buyer in writing within two (2) business days of receipt of a PO if Supplier is unable to make any scheduled delivery or perform any Services, and shall state the reasons therefore. The absence of such notice constitutes Acceptance of a PO.

8.2 Supplier shall deliver Products per the PO schedule and Buyer may return non-conforming shipments at Supplier's risk and expense. Buyer may reschedule any PO in whole or in part prior to the date of delivery of Products or commencement of performance of Services at no additional charge.

8.3 Buyer may place any portion of a PO on hold by notice that shall take effect immediately upon receipt. POs placed on hold will be rescheduled or terminated in accordance with Section 6 within a reasonable time.

9. INSPECTION.

9.1 Buyer may inspect and test all Product(s) at reasonable times before, during, and after delivery. All Products shall be received subject to Buyer's inspection, testing, and approval at Buyer's premises notwithstanding any inspection or testing at Supplier's premises or any prior payment for such Products.

9.2 The completion of any inspections will not constitute or be interpreted as a waiver of any of Buyer's rights or remedies with regard to any subsequently discovered defect or nonconformity with respect to the quality of the Products.

9.3 Products rejected by Buyer as not conforming to this PO or Product specifications, whether provided by Buyer or furnished with the Product, may be

returned to Supplier at Supplier's risk and expense and, at Buyer's request, shall immediately be repaired or replaced.

10. PRODUCT WARRANTY.

10.1 Supplier makes the following warranties regarding Product(s) furnished hereunder, which warranties shall survive any delivery, inspection, acceptance, or payment:

- (a) the Product(s) will not infringe any third party's intellectual property rights;
- (b) Supplier has the necessary right, title, and interest to provide said Product(s) to Buyer, and the Products will be free of liens and encumbrances; and
- (c) all Products shall be new, of the grade and quality specified, free from defects in workmanship and material and conform to all descriptions, and specifications furnished or published by Supplier.

10.2 If Supplier breaches any of the foregoing warranties, or Products are otherwise defective or non-conforming, after Buyer's acceptance of Products, Supplier shall, at Buyer's option, promptly repair, replace, or refund the amount paid for such Products. Supplier shall bear the cost of shipping and risk of loss of all defective or non-conforming Products while in transit.

11. SERVICE WARRANTY.

11.1 The Services shall be provided in a good workmanlike and competent manner in accordance with the highest professional standards in Supplier's trade or industry, and shall meet the descriptions, specifications, and the performance standards stated in Statement of Work. Supplier shall guarantee workmanship for twelve (12) months after Services are provided.

11.2 If Supplier breaches any the foregoing Services warranty, Supplier shall, at Buyer's option, promptly re-perform the Services, or refund the amount paid for such defective Services.

12. TITLE AND RISK OF LOSS.

12.1 All Products shall be prepared for shipment in a manner that: (a) follows good commercial practice; (b) is acceptable to common carriers for shipment at the lowest rate; and (c) is adequate to ensure safe arrival.

12.2 Supplier shall mark all containers with necessary lifting, handling and shipping information, Purchase Order number, date of shipment, and the names of Buyer and Supplier. Title and risk of loss shall pass to Buyer or Buyer's agent(s) upon delivery of Products to Buyer's dock.

13. OWNERSHIP/BAILMENT RESPONSIBILITIES.

Any specifications, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment, and other materials furnished or paid for by Buyer ("Buyer's Pre-Existing Material") shall:

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- (a) be kept confidential;
- (b) remain or become Buyer's property;
- (c) be used by Supplier exclusively for Buyer's orders;
- (d) be clearly marked as Buyer's property and segregated when not in use; (e) be kept in good working condition at Supplier's expense; and
- (f) be shipped to Buyer promptly on demand or upon termination, whichever occurs first.

14. CONFIDENTIALITY.

- 14.1 If Buyer and Seller have entered into an NDA, the terms of that NDA shall govern the disclosure of confidential information (as defined therein) between them. The following provisions shall apply if there is no NDA between the Parties currently in effect:
- 14.2 All Confidential Information shall remain the sole property of the Disclosing Party, and shall be maintained in strict confidence and protected by the Receiving Party in the same manner and with the same degree of care (but in no event less than a reasonable degree of care) as the Receiving Party uses in protecting its own information of a confidential nature.
- 14.3 Supplier shall not use such Confidential Information except as necessary to perform the Services. Supplier shall not sell, transfer, publish, disclose, display or otherwise make available any Confidential Information or any Deliverable to any third party, and shall take all reasonable steps to prevent Supplier Personnel from doing the same. Supplier shall limit disclosure of Confidential Information to Supplier Personnel on a need-to-know basis.
- 14.4 The Receiving Party will immediately notify the Disclosing Party if Confidential Information of the Disclosing Party is used, distributed or communicated in a manner not authorized under this Agreement.
- 14.5 Neither party will disclose the existence of this PO, nor any of its details or the existence of the relationship created by this PO, to any third party without the specific, written consent of the other party.
- 14.6 The Confidentiality provisions of this Section 14 do not apply to information:
- (a) generally available to, or known by, the public prior to the time of disclosure by the Disclosing Party;
 - (b) that becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party;
 - (c) which can be documented as previously known by the Receiving Party prior to disclosure thereof by the Disclosing Party;
 - (d) disclosed to the Receiving Party by a third party having no confidentiality obligations with respect to such information;

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- (e) required by law to be disclosed by the Receiving Party, provided that the Receiving Party gives the Disclosing Party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure;
 - (f) that is independently developed by the Receiving Party without breach of any confidentiality obligations; or
 - (g) to the extent the Receiving Party has obtained written consent of the Disclosing Party, but only to the extent expressly authorized in such written consent.
- 14.6 The Receiving Party will make copies of the Confidential Information only as needed. Upon the Disclosing Party's request, the Receiving Party will promptly return all tangible Confidential Information and all copies thereof, delete all electronically stored Confidential Information, and deliver to the Disclosing Party written certification of such return and deletion, except that the Receiving Party may retain one copy for archival purposes only.

15. PUBLICITY.

- 15.1 Neither party may use the other party's name or trademarks in any type of advertisement materials, web sites, press releases, interviews, articles, brochures, business cards, project reference or client listings without the other's written consent.
- 15.2 Written consent by Buyer is only valid if authorized by the Buyer's Public Relations Department and any authorized usage shall be pursuant only to Buyer's Trademark Guidelines.

16. INTELLECTUAL PROPERTY ("IP") INDEMNIFICATION.

- 16.1 Supplier shall defend, indemnify, and hold Buyer, its subsidiaries, agents, directors, officers, employees, consultants and subcontractors ("**Buyer Indemnified Parties**") harmless from any costs, expenses (including reasonable attorneys' fees), losses, damages, or liabilities incurred as a result of actual or alleged third party infringement of any patent, copyright, trade secret, trademark, mask work, or other intellectual property right arising out of the use of Product(s) or Services.
- 16.2 Buyer shall promptly notify Supplier in writing of any such claim or demand.
- 16.3 If an injunction issues as a result of any claim or action, Supplier agrees at its expense and Buyer's option to either: (a) procure for Buyer the right to continue using Products or Services; (b) replace them with non-infringing Products or Services; (c) modify them so they become non-infringing; or (d) refund to Buyer the amount paid for any infringing Products or Services.

17. GENERAL INDEMNITY.

- 17.1 Supplier shall, to the fullest extent permitted by law, protect, defend, indemnify, and hold Buyer Indemnified Parties harmless from and against any and all claims,

liabilities, demands, penalties, forfeitures, suits, judgments, and the associated costs and expenses (including attorney's fees), which Buyer may hereafter incur, become responsible for, or pay out as a result of: violations by Supplier of applicable laws including those specifically referenced in this PO, death or personal injury (including bodily injury) to any person, destruction or damage to any property, contamination of or adverse effects on the environment, and any cleanup costs in connection therewith, caused in whole or in part by any negligent or willful acts, errors, or omissions by Supplier, its employees, officers, agents, representatives, or subcontractors while performing Services under this PO on the premises of Buyer.

- 17.2 The foregoing indemnity shall include any claim made or threatened, whether by legal proceedings or otherwise, against Buyer by a third party on the grounds that any person supplied or engaged by Supplier is or was deemed to be an employee of Buyer.
- 17.3 Supplier further agrees that if Buyer is required by law or otherwise to include Supplier or any Supplier's employees in any of Buyer's benefit plans or provide severance benefits under law, Supplier shall reimburse Buyer for the actual amount required to be paid, or the fair market value of any benefit received by Supplier or Supplier's employees arising from work performed under this PO.

18. HAZARDOUS MATERIALS.

- 18.1 If Products or any Services provided hereunder include hazardous materials, Supplier represents and warrants that Supplier and its personnel providing Services to Buyer understand the nature of and hazards associated with the design and/or service of Products including handling, transportation, and use of such hazardous materials, as applicable to Supplier.
- 18.2 Prior to causing hazardous materials to be on Buyer's property, Supplier shall obtain written approval from Buyer's Facility Management (email approval will suffice).
- 18.3 Supplier will be responsible for, and indemnify Buyer from, any liability resulting from the actions of Supplier or its contractors in connection with: (a) providing such hazardous materials to Buyer; and/or (b) the use of such hazardous materials in providing Services to Buyer. Supplier will timely provide Buyer with material safety data sheets and any other documentation reasonably necessary to enable Buyer to comply with applicable laws and regulations.

19. CUSTOMS CLEARANCE. Upon Buyer's request, Supplier will promptly (at Supplier's sole cost) provide Buyer with a statement of origin for all Products and with applicable customs documentation for Products wholly or partially manufactured outside of the country of import.

20. COMPLIANCE WITH LAWS.

- 20.1 Supplier shall comply with all national, state, provincial and local laws and regulations governing the manufacture, transportation, import, export, and/or sale of Products and/or the performance of Services in the course of this PO.

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- 20.2 Neither Supplier nor any of its subsidiaries will export/re-export any technical data, process, product, or service, directly or indirectly (including the release of controlled technology to foreign nationals from controlled countries), to any country for which the United States government or any agency thereof requires an export license or other government approval without first obtaining such license.
- 20.3 Supplier must comply with all employment and labor laws when providing Services or manufacturing Products. Supplier shall comply with all applicable laws regarding non-discrimination in terms and conditions of employment, payment of minimum wage and legally mandated employee benefits and compliance with mandated work hours.
- 20.4 Supplier shall comply with all applicable laws regarding employment of underage or child labor and shall not employ children under the age of 16.
- 20.5 For Services provided in the U.S., Supplier agrees not to provide foreign nationals (non-U.S. citizens or U.S. permanent residents) as employees or contingent workers for work on any Buyer site unless that foreign national is covered under a valid U.S. Export License or is not exposed to controlled technology.
- 20.6 Additionally, for Services performed outside of the U.S., Supplier agrees not to provide foreign nationals as employees or contractors for work on any Buyer site unless the foreign national (a) is a citizen or permanent resident of the country of that Buyer site, or (b) is covered under a valid U.S. Export Authorization, or (c) is not exposed to controlled technology, or (d) does not require a valid U.S. Export License. Refer to <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl> for further information. It is a requirement of this PO that Supplier shall be responsible for obtaining all such approvals, authorizations, permits and licenses and shall indemnify and hold Buyer harmless from any failure to comply with such requirement.
- 20.7 **Products/Services In Support of a U.S. Government Contract.**

If Buyer is purchasing Products or Services in support of a U.S. Government Contract, the following additional terms shall apply:

- (a) Supplier represents and agrees that it is in compliance with Executive Order 11246 (non-segregated facilities), Executive Order 11375 (equal opportunity) and fulfilling all other Equal Opportunity regulations to include; the Vietnam Era Veterans' Readjustment Assistance Act as amended by the Veterans Employment Opportunities Act of 1998 (to include Vietnam-era Veterans and other Veterans who served on active duty during a war or campaign or expedition for which a campaign badge has been authorized), and the Immigration Act of 1987, unless exempted or inapplicable.
- (b) Supplier shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all

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individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

- (c) Supplier represents that it does not use or provide Buyer, through Supplier's Software or Services, the following: Kaspersky equipment (FAR 52.204-23); or Covered Telecommunications and Equipment (FAR 52.204-25). Supplier must promptly notify Buyer of its discovery of such use in its performance of Services or provision of Software within one (1) business day.
 - (d) The requirements of 41 C.F.R. 60-1.4(a), 41 C.F.R. 60-250.5(a), 41 C.F.R. 60-300.5(a), 41 C.F.R. 60-741.4, et seq., and 29 C.F.R. part 470, which are incorporated into this Purchase Order by reference, if applicable.
- 20.8 In performing its obligations under this PO, Supplier shall comply with the McAfee Enterprise's Supplier Ethics Expectations and the Electronic Industry Citizenship Coalition Code of Conduct set forth at http://www.eicc.info/eicc_code.shtml.

21. PRIVACY.

- 21.1 Supplier shall comply with all laws, regulations, orders or directives designed to protect Personal Data and Supplier warrants that it shall only use Personal Data collected hereunder to the extent required to perform its obligations. Supplier may not, under any circumstances, sell, trade or rent all or any portion of the Personal Data collected in connection with this Purchase Order.
- 21.2 Supplier will not provide third parties (including, without limitation, Supplier's subcontractors) with access to Personal Data for any purpose without Buyer's prior written consent. If Supplier is authorized by Buyer to allow access to any Personal Data to a Supplier subcontractor, such subcontractor shall agree to protect and process Personal Data under written terms no less privacy protective than those contained in this PO. Furthermore, Buyer reserves the right, at its sole option, to enter into additional confidentiality agreements directly with such subcontractors in order to ensure adequate protection of Personal Data or comply with any applicable law.
- 21.3 This PO does not authorize the transfer or processing of any Personal Data of individuals residing in the European Economic Area or Switzerland without the acceptance of the privacy and security requirements set forth in McAfee Enterprise's Data Processing Exhibit. at <https://www.mcafee.com/enterprise/en-us/assets/legal/data-processing-exhibit-suppliers.pdf> ("Data Processing Exhibit") as amended from time to time, which shall be incorporated herein by reference. The Data Processing Exhibit shall be deemed accepted upon Supplier's Acceptance of this PO. Supplier shall strictly limit the disclosure of Personal Data to only those Supplier employees who need to know and only to the extent necessary for the performance of its obligations under this PO. Supplier shall

ensure that its employees processing Personal Data have received timely and appropriate privacy training and are bound by confidentiality obligations not less restrictive than those contained in this PO.

- 21.4 Supplier shall maintain appropriate administrative, technical and organizational controls to safeguard Personal Data against loss, destruction, improper use or unauthorized access. Should any Personal Data become subject to such destruction, use or access, Supplier will promptly notify Buyer. Buyer may conduct an audit of Supplier's controls referenced in this paragraph as required to safeguard the Personal Data.
- 21.5 Supplier shall permanently delete any and all Personal Data upon Buyer's request or, in the absence of such a request, within thirty (30) days after the Personal Data is no longer being actively used in fulfilling Supplier's obligations to Buyer under this PO.

22. SECURITY.

- 22.1 Supplier shall maintain commercially reasonable security measures in substantial compliance with industry standards and best practices applicable to organizations which sell products and perform services similar to those provided by Supplier to Buyer under this PO, including organizational, technical, and administrative safeguards to protect Buyer Information in the possession, custody, or control of Supplier.
- 22.2 Supplier shall protect Buyer Information in accordance with McAfee Enterprise's Supplier Security Requirements, which are incorporated herein. Supplier shall use the same degree or greater care to prevent unauthorized use, dissemination, or disclosure of Buyer Information as it uses to protect Supplier's own information of a similar nature.
- 22.3 Supplier shall periodically (at least annually) conduct an audit of the security of Buyer Information in its possession, custody, or control to verify reasonable and appropriate security measures are in place and Supplier is in compliance with this PO. Supplier shall make the results of any such audit available to Buyer upon request.

23. ELECTRONIC TRANSACTIONS.

- 23.1 Buyer and Seller agree to accept electronic records and electronic signatures relating to transactions contemplated by this PO.
- 23.2 In connection with system-to-system implementations:
 - (a) The parties will implement the particular transaction sets and/or message specifications mutually agreed upon by the parties. Each party's implementation will comply with applicable standards except as otherwise mutually agreed.
 - (b) Where applicable standards require that the receiving party issue a notice to the other confirming message receipt, such notice will not constitute a binding acceptance or acknowledgement of anything more than mere receipt.

In the event that any element of an applicable standard conflicts with a provision of this PO, the provision of this PO will control.

- (c) If a party has adopted an electronic identifier (e.g., a digital signature), the other party is entitled to rely on the authenticity of messages signed by or otherwise associated with such electronic identifier unless and until notified otherwise by the adopter.
- 23.3 Either party may use a third-party service provider in connection with e-business activities (e.g., to route or translate EDI or XML messages, or to host web-based services). The party contracting with a service provider must require that such service provider:
- (a) use information disclosed to or learned by such service provider in connection with providing services solely for the purpose of providing the applicable services, and
 - (b) not disclose such information to any third party.
- 23.4 Either party may begin to use or may change a service provider upon reasonable prior written notice. Each party will be liable for the acts or omissions of its service provider in connection with activities contemplated by this PO.
- 24. COMPLIANCE WITH ANTI-CORRUPTION LAWS.**
- 24.1 Supplier agrees to comply with all applicable anti-bribery and anti-corruption laws, including, but not limited to, the United States Foreign Corrupt Practices Act (“FCPA”), which prohibits the offering, paying, or promising to pay anything of value, directly or indirectly, to a government official (which includes officers of a government, persons officially acting on behalf of a government, employees of a government corporation, officials of a political party; and candidates for political office) for the purpose of (1) improperly influencing an act or decision of the government official in his or her official capacity, (2) inducing the government official to do or omit to do any act in violation of the lawful duty of such official, (3) securing an improper advantage, or (4) improperly inducing the government official to use his influence to affect or influence any act or decision of a government or instrumentality, in order to affect or influence any act or decision of a government or instrumentality, in order to assist Buyer or any third party, to obtain or retain business.
- 24.2 Supplier represents that, unless disclosed to Buyer in a separate written statement, none of its employees, directors, officers, or principals is a government official with jurisdiction or influence over the PO or the respective, applicable businesses of Buyer and Supplier. Supplier must notify Buyer in writing within five (5) business days if at any time during the term of this PO any of its employees, directors, officers or principals is named, appointed, or otherwise becomes a Government Official with jurisdiction or influence over the Included Scope.
- 24.3 The parties acknowledge and agree that in the event that Buyer believes, in good faith, that Supplier has breached this section, Buyer shall have the right to immediately terminate any or all agreements between Buyer and Supplier.

25. **ADDITIONAL SERVICE TERMS.** See Attachment 4 for additional terms regarding Seller’s provisioning of Services.

26. **LIMITATION OF LIABILITY.**

Under no circumstances is buyer liable for any indirect, special, incidental, punitive or consequential damages, or damages for loss of profits, loss of goodwill, or loss of personnel salaries in connection with this agreement. Buyer’s total cumulative liability for direct damages shall be limited to the fees paid for the product or service giving rise to the claim under the applicable purchase order.

27. **GENERAL.**

27.1 **Waiver.** No waiver of any breach hereof or delay in enforcing this PO shall be held to be a waiver of any other or subsequent breach. If any provision of this PO is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall modify this PO to the minimum extent necessary to be valid and enforceable, or if it cannot be made valid and enforceable, the court will sever and delete the provision. Such a determination will not affect the validity of the remaining provisions. Buyer’s rights and remedies herein are in addition to any other rights and remedies provided by law or in equity.

27.2 **Assignment.** Buyer may assign or delegate this PO without Supplier’s consent. Supplier may not assign or delegate its rights and obligations under this PO without Buyer’s prior written consent. For purposes of this Section 27.2, the acquisition, merger, consolidation, or change in control of Supplier or any assignment by operation of law shall be deemed an assignment that requires Buyer’s written consent. Buyer may terminate this PO for cause should Supplier attempt to make an unauthorized assignment of any right or obligation arising hereunder.

27.3 **Dispute Resolution.** Any dispute arising directly under the express terms of this PO or the grounds for termination of any rights granted under this PO shall be resolved as follows: first, within thirty (30) calendar days from one party’s written request to the other, senior executives of both parties shall meet and in good faith, attempt to resolve such dispute. If the senior executives cannot resolve the dispute within thirty (30) calendar days of the dispute notice, either party may deliver to the other party a demand for mediation. The parties agree to try to resolve the dispute with an impartial mediator selected by mutual agreement. If the parties have not resolved the dispute or claim within sixty (60) calendar days after the mediation demand, either party may begin litigation.

27.4 **Applicable Law/Venue.** The validity, performance and interpretation of this PO will be governed by and construed in accordance with the laws of the jurisdiction and the courts as set forth in the chart immediately below:

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Name of Buyer Entity	Choice of Law	Venue
Musarubra US LLC	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California
McAfee Public Sector LLC	State of California, United States	State court in Santa Clara California or in the Federal District Court for the Northern District of California
Musarubra Ireland Limited	Laws of the Republic of Ireland	Courts of Dublin, Ireland
Musarubra Japan KK	Laws of Japan	Tokyo District Court of Japan
Musarubra Singapore Pte Ltd.	Laws of the Republic of Singapore	Courts of the Republic of Singapore
Musarubra Australia Pty Ltd.	Laws of Australia	Courts of New South Wales, Australia
McAfee (Beijing) Security Software Co. Ltd.	Laws of the Republic of Singapore	Courts of the Republic of Singapore

The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this PO.

- 27.5 **TUPE.** The parties agree that the Acquired Rights Directive 98/50/EC (TUPE) shall not apply to this PO. In the unlikely event that TUPE is deemed to apply, Supplier shall be responsible for the transfer of personnel falling within the application of TUPE, and Supplier shall be responsible for the costs of the parties for the application of TUPE. Supplier shall further keep McAfee indemnified in full in respect of any and all liabilities, loss, damage, cost or expense sustained by McAfee as a result of the application of TUPE under this PO.
- 27.6 **INDEPENDENT CONTRACTOR.** In performing Services under this PO, Supplier is an independent contractor and its personnel and other representatives shall not act as nor be agents or employees of Buyer. This PO is not intended to create a relationship such as a partnership, franchise, joint venture, agency or employment between the parties. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.
- 27.7 **ORDER OF PRECEDENCE.**
If there is any conflict or inconsistency between these purchase order terms and conditions and any other document, the following order of precedence will apply:

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- (a) these purchase order terms and conditions;
 - (b) any statement of work duly executed by both parties; or
 - (c) any fully executed addenda to the purchase order.
- 27.8 **SURVIVAL.** The following provisions shall survive the termination or expiration of this PO by either party for any reason: 4.5 (related to Taxes), 5 (Invoicing/Payment), 9 (Inspection), 10 (Product Warranty), 11 (Service Warranty), 13 (Ownership/Bailment), 14 (Confidentiality), 16 (IP Indemnification), 17 (General Indemnity), 18.3 (Hazardous Materials), 21.5 (Privacy), 26 (Limitation of Liability), 27 (General), Attachment 3 (License). In addition, any right or legal obligation of a party that by its express term or nature would reasonably extend beyond the term of this PO shall survive for such extended period.
- 27.9 **NOTICES.** All notices and consents required or permitted to be given under this PO shall be in writing and sent to recipient's address specified in the PO. Any notice shall be treated as having been delivered: (i) when received if delivered by hand; (ii) the next business day after being sent by pre-paid, nationally-recognized, overnight air courier with tracking capabilities; or (iii) five (5) business days after posting if sent by registered first class mail, return receipt required, postage prepaid.
- 27.10 **ENTIRE AGREEMENT.** This PO (including the attachments) and any written amendments executed by Buyer and Seller to these PO Terms, shall constitute the entire agreement between the parties with respect to the subject matter herein and shall replace all prior promises or understandings, written or oral. These PO Terms and Conditions may not be amended except by a written document signed by each party through its authorized representative.

-Attachment 1 (Definitions) follows this page-

Attachment 1-Definitions

“**Acceptance**” means Supplier’s (a) acknowledgment of a Purchase Order, (b) commencement of the Services, (c) shipment of Product(s) to be purchased, (d) failure to raise any issues with a Purchase Order within forty-eight (48) hours of receipt, or (e) acceptance of payment from Buyer (in any form) for Product(s) to be purchased, whichever occurs first.

“**Buyer**” means one of the Buyer legal entities identified in Section 27.4 above, as identified on the PO.

“**Buyer Information**” means Personal Data, end user data, financial and banking data, Confidential Information, and any other non-public, proprietary information of Buyer that may be provided to or otherwise obtained by Supplier in connection with this Purchase Order.

“**Confidential Information**” means all non-public, confidential, proprietary and trade secret information including, without limitation, all trade secrets, know-how, methods, designs, drawings, schematics, specifications, documentation, network and security configurations, network architecture, pricing, forecasts, sales and other financial results, accounting and tax information, product and service information, business roadmaps, studies, reports, supplier and vendor information and lists, customer and prospect lists, analyses, compilations, interpretations and notes, customer or employee personally identifiable information, and any other documents, materials and business or technical information disclosed by one party (the “**Discloser**”) to the other party (the “**Receiver**”), whether disclosed orally or disclosed or accessed in written or electronic form, which is identified as confidential, or which can reasonably be considered confidential due to its nature or the circumstances surrounding disclosure.

“**McAfee Enterprise’s Data Processing Exhibit**” means the Data Processing Exhibit at <https://www.mcafee.com/enterprise/en-us/assets/legal/data-processing-exhibit-suppliers.pdf>.

“**Electronic Industry Citizenship Coalition (“EICC”) Code of Conduct**” means the code of conduct at: http://www.responsiblebusiness.org/media/docs/EICCCodeofConduct5_1_English.pdf.

“**McAfee Enterprise Supplier Security Requirements**” means the requirements at: <https://www.mcafee.com/enterprise/en-us/assets/legal/data-processing-exhibit-suppliers.pdf>.

“**McAfee Enterprise Supplier Ethics Expectations**” means the requirements at <https://www.mcafee.com/enterprise/en-us/about/legal/supplier-ethics.html>.

“**Personal Data**” means any information that can be used, alone or in combination with other data, to identify an individual or is otherwise identified as “Personal Data” under applicable data protection laws.

“**Product(s)**” mean the goods (including hardware equipment and/or Software) provided by Supplier to Buyer under the applicable Purchase Order.

“**Purchase Order**” or “**PO**” means, collectively, these Purchase Order Terms and Conditions, the proposed purchase contract issued by an authorized representative of

McAfee Enterprise – PO Terms and Conditions

Buyer and any Statements of Work or addenda executed hereunder, providing for Supplier to ship, provide, or cancel, a specific quantity of Products or perform Services to a specified schedule.

“**Service(s)**” means any work to be performed by Supplier which may include, but is not limited to, development, training, consulting, support, and/or maintenance, as described on a PO.

“**Software**” means the software or firmware, licensed by the Supplier or its authorized partners to Buyer, including, but not limited to, any updates, upgrades, modifications, enhancements, subsequent versions or releases, and software or firmware provided in connection with Products and/or Services, and any software updates.

“**Statement of Work**” or “**SOW**” means a written document describing the Services to be performed by Supplier under this PO as set forth in an addendum or another document(s) executed by the parties and referencing this PO.

“**Supplier**” means the party receiving a PO from Buyer.

Trademark Guidelines means Buyer’s then current guidelines at <https://www.mcafee.com/us/about/legal/trademark-policy-and-guidelines.aspx>.

-Attachment 2 follows this page-

Attachment 2-Insurance Requirements

1. Without limiting or qualifying Supplier's liabilities, obligations, or indemnities otherwise assumed by Supplier pursuant to this PO, Supplier shall maintain, at its sole cost and expense, with companies of an AM BEST rating A-VIII, of the following:
 - (a) **Commercial general liability** insurance covering all operations of the Supplier, including, but not limited to, products/completed operations and blanket contractual liability specifically covering the indemnification provisions herein, against claims for personal and bodily injury and property damage with a combined single limit of U.S. \$2,000,000;
 - (b) **Automobile liability insurance** covering bodily injury and property damage liability arising out of the use by or on behalf of the Supplier, its agents and employees of any owned, non-owned or hired automobile with combined single limits not less than U.S. \$1,000,000;
 - (c) **Employee theft policy** covering loss of money, securities and other property for which Supplier is legally liable or which is held by Supplier in any capacity, whether or not Supplier is liable, caused by theft of an employee acting alone or collusion with others subject to a minimum limitation of U.S. \$1,000,000; and
 - (d) **Property insurance** covering all real and personal property and inventory, including Supplier products, for "all risks" of physical loss or damage, including business interruption and boiler and machinery breakdown, subject to a minimum limitation of U.S. \$1,000,000.
2. Supplier's insurance shall be primary, and any applicable insurance maintained by Buyer shall be excess and non-contributing. The above coverage shall name Buyer as an additional insured.
3. Supplier shall maintain statutory workers' compensation coverage and employers' liability insurance in the amount of \$1,000,000.00 per occurrence. Such insurance shall include an insurer's waiver of subrogation in favor of Buyer.
4. If Supplier is providing any professional service to Buyer, Supplier shall maintain professional liability insurance (including errors and omissions coverage) with liability limits not less than \$1,000,000.
5. Supplier shall also provide written notice to Buyer of any cancellation, termination or material change to the insurance required herein along with a copy of any cancellation or termination notice received from its' insurer(s), no later than fifteen (15) business days upon first becoming aware of any such cancellation, termination or material change.
6. Supplier will not permit any such insurance policy to lapse. If Supplier cancels such insurance policy, it will provide thirty (30) days' notice to Supplier prior to canceling such insurance policy and will promptly replace such insurance policy in accordance with this Section, without lapse in coverage.

-Attachment 3 follows this page-

Attachment 3—Additional Terms - Purchase of Software License(s)

1. LICENSE GRANT.

- 1.1 Supplier grants to Buyer a non-exclusive, perpetual, royalty-free, and worldwide license, to use, copy, and distribute internally all associated documentation and technical materials listed on an applicable order form or other type of documentation for Buyer's internal purposes only, including the right to:
 - (a) use copies of the Software for internal training,
 - (b) permit Buyer's subcontractors to exercise Buyer's rights under this PO solely in performance of work for Buyer; and
 - (c) make archival copies pursuant to Buyer's standard backup and archival policies and procedures.
- 1.2 This license supersedes any and all "click-to- accept" or shrink-wrapped licenses, in hard-copy or electronic form, embedded in or included with the Software.
- 1.3 Supplier shall provide Buyer with the latest releases, updates, and upgrades made to each Software program licensed hereunder as soon as they are made commercially available to Supplier's other customers, provided Buyer is receiving support and maintenance from Supplier.
- 1.4 Title to and ownership of the Software shall at all times remain with Supplier. Buyer will include on any authorized copies the copyright notices or proprietary legends contained within the Software or on the associated documentation.
- 1.5 Buyer shall own all right, title, and interest in such modifications, enhancements, or derivatives made to the Software by Buyer or by Supplier at Buyer's request, subject to Supplier's underlying intellectual property rights and the licenses granted hereunder. Supplier shall not use or incorporate Buyer's modifications, enhancements, or derivatives into Supplier's Software without Buyer's express written permission.

2. SOFTWARE WARRANTIES.

- 2.1 In addition to any other warranties set forth in these PO Terms, Supplier makes the following representations and warranties to Buyer regarding the Software:
 - (a) The Software is free from any significant programming errors and defects in workmanship and materials, and substantially complies with functionality and performance set forth in Supplier's published specifications or as otherwise expressly agreed in writing;
 - (b) The Software and any updates provided by Supplier contain no disabling code and is free from any viruses, Trojan horses, trap doors, time bombs or other malware at the time of delivery to Buyer;
 - (c) Supplier has legal title and rights of ownership of the Software and supplemental documentation; and
 - (d) Supplier has all necessary rights, title, and interest to grant the rights set

forth herein to Buyer, free of any claims, liens or conflicting rights in favor of any third party.

3. SOFTWARE SUPPORT AND MAINTENANCE.

- 3.1 Supplier shall provide Buyer with any maintenance services, installation assistance, customized support, consulting or similar assistance that Supplier provides to Buyer related to the Software or to facilitate Buyer's productive use of the Software.

-Attachment 4 follows this page-

Attachment 4-Additional Service Terms

1. Supplier agrees to abide by all Buyer's rules and regulations while on Buyer's premises or performing Services including, but not limited to, safety, drug-free work environment, health and hazardous material management rules, and rules prohibiting misconduct on Buyer's premises including, but not limited to, use of physical aggression against persons or property, harassment, and theft.
2. Supplier will perform only those Services identified in a Statement of Work and will work only in areas designated for such Services. Supplier shall take all reasonable precautions to ensure safe working procedures and conditions for performance on Buyer's premises and shall keep Buyer's site neat and free from debris. Supplier agrees not take any actions whatsoever to wrongfully influence any decisions in its or Buyer's favor, either directly or indirectly.
3. **Sole Compensation.** Supplier's sole compensation is as set forth in this PO and neither Supplier nor Supplier's employees are entitled to participate in any of Buyer's benefit plans, including, but not limited to, stock option plans, stock participation plans, profit sharing, retirement or pension plan contributions or savings or medical plans.
4. **Compliance With Global External Worker Policy.** Suppliers who provide Services to Buyer and who assign their employees or contractors to Buyer's premises to provide Services are responsible for complying with Buyer's global external workforce policy available at <https://www.mcafee.com/us/partners/mcafee-supplier-portal.aspx>. This includes, but is not limited to, adhering to requirements for site and network access and complying with all relevant restrictions including waiting periods to satisfy workforce stabilization guidelines and adherence to applicable tenure restrictions for staff augmentation workers.
5. Supplier shall ensure that Supplier and all of its employees and subcontractors comply with all Buyer access and security requirements, including, but not limited to, cooperation with access paperwork, relevant vetting requirements, and completion of any required orientation required by Buyer.
6. Supplier represents and warrants that Supplier has no outstanding agreement or obligation that is in conflict with any of the provisions of this PO, or that would adversely affect Supplier's performance hereunder and Supplier agrees that Supplier shall not enter into any such conflicting agreement during the term of this PO.

-End of Attachment 4-

-End of PO Terms and Conditions-