

---

## **MCAFEE ENTERPRISE REMOTE CLOUD PRODUCT EVALUATION AGREEMENT**

Please scroll down and read all of the following terms of use carefully. This is a legal agreement (“Agreement”) between You and McAfee Enterprise (defined in Section 12 below) (or “We” or “Us” or “Our”) stating the terms and conditions that govern Your access to and use of the McAfee Enterprise Remote Cloud Product evaluation. Collectively, McAfee Enterprise and You shall be referred to as the “Parties” and individually as a “Party.”

By entering into this Agreement on behalf of Your organization, You represent that You have the authority to bind such entity to this Agreement, in which case the terms “You” and “Your” shall refer to such entity.

**BY USING THE MCAFEE ENTERPRISE REMOTE CLOUD PRODUCT EVALUATION, YOU AGREE TO ALL THE TERMS AND CONDITIONS STATED HEREIN.**

**IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT ATTEMPT TO ACCESS OR USE THE MCAFEE ENTERPRISE REMOTE CLOUD PRODUCT EVALUATION.**

For good and valuable consideration, the receipt and sufficiently of which is hereby acknowledged, the Parties agree as follows:

1. **PRODUCT; LICENSE.** Subject to the terms and conditions of this Agreement, We grant to You a limited (pursuant to Section 3 below), non-exclusive, non-sublicensable, non-assignable, non-transferable evaluation license solely for Your internal business purposes in determining whether to purchase a commercial use license for the Product. The Product must be evaluated in a secure evaluation environment, properly protected at all times against access or use in violation of this Agreement. You are strictly prohibited from using the Product in any production environment or for any external business purpose. Except as otherwise provided for herein, We will not provide You with: (a) any other products or services that may be necessary to use the Product; or (b) any integration, implementation, maintenance, or support for the Product.
2. **TITLE; RESTRICTIONS.**
  - 2.1 We retain all right, title, and interest in and to the Product and all copies, improvements, enhancements, modifications, and derivative works of the Product, including, without limitation, all patent, copyright, trade secret, trademarks, and other intellectual property rights in the Product.
  - 2.2 Except for the limited license granted in Section 1 (Product; License), We grant no express or implied rights to You under this Agreement to any of Our patents, copyrights, trade secrets, trademarks, or other intellectual property rights.
  - 2.3 You will not authorize any third party (person or entity) to use the Product and will not, and will not authorize others, to:
    - (a) sell, distribute, or sublicense the Product;
    - (b) copy, make modifications to, translate, disassemble, decompile, reverse engineer, otherwise decode or alter, or create derivative works based on the Product;
    - (c) operate the Product in a service bureau or for any business purposes;
    - (d) publish any benchmark results pertaining to the Product; or

(e) remove or alter any proprietary notices on or in the Product.

3. **TERM; TERMINATION.** This Agreement (including Your license to use the Product) commences as of the Effective Date and will automatically terminate after the agreed upon date established by Our representative after the Effective Date or upon notice from Us.
4. **NO WARRANTY.** THE PRODUCT MAY (A) HAVE LIMITED FEATURES; (B) FUNCTION FOR A LIMITED PERIOD OF TIME; OR (C) HAVE OTHER LIMITATIONS NOT CONTAINED IN A COMMERCIAL VERSION OF THE PRODUCTS. THE PRODUCT IS PROVIDED "AS IS" AND "WITH ALL FAULTS". WE MAKE NO REPRESENTATIONS OR WARRANTIES, AND WE DISCLAIM ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.
5. **DISCLAIMER; LIMITATION OF LIABILITY.** IN NO EVENT WILL WE BE LIABLE TO YOU FOR (A) ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR EXTRA-CONTRACTUAL DAMAGES OF ANY KIND; OR (B) ANY LOSS OF DATA OR BUSINESS, DIMINUTION IN VALUE, LOSS OF PROFITS OR REVENUE, OR BUSINESS INTERRUPTION, REGARDLESS OF LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), WHETHER OR NOT FORESEEABLE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT LIMITED BY APPLICABLE LAW, AND REGARDLESS OF THE BASIS FOR ANY CLAIM BY YOU (EVEN IF BASED ON NEGLIGENCE), OUR MAXIMUM AGGREGATE LIABILITY UNDER OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER IS LIMITED TO \$50.00USD. THE LIMITATIONS IN THIS SECTION 5 (DISCLAIMER; LIMITATION OF LIABILITY) WILL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE.

YOU ARE SOLELY RESPONSIBLE FOR ANY CONTENT, APPLICATION OR NON-MCAFFEE ENTERPRISE SOFTWARE THAT YOU LOAD INTO OR CREATE WITHIN THE EVALUATION ENVIRONMENT, AND AGREE, AT YOUR SOLE COST AND EXPENSE, TO DEFEND US AGAINST ANY CLAIM AND INDEMNIFY US FROM ANY DAMAGES, LIABILITIES, COSTS AND EXPENSES OR THE SETTLEMENT AGREED TO BY YOU, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CONTENT, APPLICATION OR NON-MCAFFEE ENTERPRISE SOFTWARE. WE ARE NOT RESPONSIBLE FOR THE SECURITY OF ANY CONTENT, APPLICATION OR SOFTWARE THAT YOU LOAD INTO OR CREATE WITHIN THE EVALUATION ENVIRONMENT.

## 6. **CONFIDENTIAL INFORMATION.**

- 6.1 If the Parties have previously entered into a mutual confidentiality agreement, it remains in effect, except with respect to specific information and disclosures made in connection with this Agreement.
- 6.2 In connection with this Agreement, each Party may receive or have access to confidential information and materials of the other Party. As used in this Agreement, "**Confidential Information**" means information that:
  - (a) is designated as "confidential" or by similar words by the disclosing Party at the time of disclosure and, if oral or visual, is confirmed as confidential by the disclosing Party in writing within 15 days of disclosure; or

- (b) the receiving Party should reasonably have considered to be confidential under the circumstances surrounding disclosure;
- 6.3 **Exclusions.** Confidential Information does not include any information that:
- (a) was previously known to the receiving Party,
  - (b) is received from a third party without similar restriction,
  - (c) is or becomes publicly available other than through unauthorized disclosure, or
  - (d) is independently developed by the receiving Party without the use of the other Party's Confidential Information.
- 6.4 As between the Parties, the disclosing Party owns the Confidential Information it discloses to the receiving Party.
- 6.5 The receiving Party may use, reproduce, and disclose the disclosing Party's Confidential Information only:
- (a) as necessary or appropriate for the receiving Party to perform its obligations or exercise its rights under this Agreement; provided, that, the receiving Party may only disclose the disclosing Party's Confidential Information to other persons and entities that have a need to know such Confidential Information and have agreed to maintain the confidentiality of such Confidential Information in accordance with terms and conditions at least as restrictive as those set forth herein; and
  - (b) to the extent required by law, provided that the receiving Party promptly notifies the disclosing Party of any such disclosure required by law and provides reasonable cooperation and assistance to the disclosing Party in any and all efforts of the disclosing Party to limit or avoid the disclosure.
- 6.6 In addition, We may use, reproduce, and disclose product- and support-related information, data, and material that is anonymized, de-identified, or otherwise rendered not reasonably associated or linked to an identifiable individual person or entity for product improvement and other purposes consistent with the Privacy Notice available from <http://www.mcafee.com/enterprise>.
- 6.7 The receiving Party will use the same efforts to protect the disclosing Party's Confidential Information from misuse or wrongful disclosure by the receiving Party (or any person or entity to which the receiving Party discloses the Confidential Information) as it uses to protect its own confidential information, data, and material of a similar nature. Neither Party will disclose any Confidential Information of the other Party to any third party for a period of five (5) years following the date of disclosure, except as otherwise expressly permitted under this Section 6 (Confidential Information).

## 7. YOUR CONTENT.

- 7.1 Except as set forth in Our Data Privacy Agreement for Customers (available at <https://www.mcafee.com/enterprise/en-us/about/legal.html/>), We make no assurances that any of Your content or Your applications loaded into or created within the evaluation environment will be secured or that such data will remain confidential.
- 7.2 You acknowledge that the McAfee Enterprise Cloud Evaluation is not designed for use with production data (including business content and personal information) and accordingly, You will not include any production data in Your content or use the services for any commercial purpose. **You should frequently back up any content, application or software that You load into, or creates within, the evaluation environment. We**

reserve the right at Our sole discretion to delete, at any time and for any reason, any content, application or software in the evaluation environment, and any such content, application or software may become permanently lost if so deleted.

8. **INSTALLATION OF EVALUATION PRODUCT.** At no charge to You, We will provide reasonable assistance to You as may be necessary to install and configure the Product for the sole purpose of Your evaluating the Product as permitted by and subject to the terms of the Agreement. We will provide such assistance and perform such installation and configuration services as it determines are necessary and in the manner required in its sole discretion (the “Services”).
9. **PROFESSIONAL SERVICES TERMS.** If We determine that Services are required hereunder, Our performance and Your receipt of the Services, and all other matters pertaining to the Services, are subject to the Professional Services Terms at <http://www.mcafee.com/us/resources/legal/online-service-terms-na.pdf>.
10. **GENERAL.**
- 10.1 **Feedback.** “Feedback” as used here, refers to any suggestion or idea or modifying the Product, including, without limitation, all intellectual property rights in any suggestion or idea. If You provide Us with Feedback in connection with Your use of the Product, all such Feedback will be Our sole and exclusive property and We shall be free to use such Feedback on an unrestricted basis, without compensation to You or any person or third party.
- 10.2 **Governing Law and Venue.** The validity, performance and interpretation of this Agreement will be governed by and construed in accordance with the laws of the jurisdiction and the courts as set forth in the table on the following page:

<u>Name of McAfee Enterprise Legal Entity</u>	<u>Choice of Law</u>	<u>Venue</u>
Musarubra US LLC	State of California, United States	State courts 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

The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties may apply to any court of

competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary.

- 10.3 You acknowledge that the Product may be subject to, and You agree to comply with, applicable U.S. and other country export laws and regulations.
- 10.4 **Entire Agreement.** This Agreement contains the complete agreement between You and McAfee Enterprise relating to its subject matter and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication, whether oral or written, relating to the subject matter of this Agreement.
- 10.5 **Other.** This Agreement may be amended only in writing, signed by each Party. No waiver of any right by either Party under this Agreement shall be of any effect unless such waiver is express, in writing and signed by the waiving Party. In the event that any one or more provisions in this Agreement should be held to be unenforceable in any respect, such unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such unenforceable provision had not been contained herein. This Agreement may not be assigned nor transferred by You without Our prior written consent.
- 10.5 **Survival.** Sections 2 (Title; Restrictions), 3 (Term; Termination), 4 (No Warranty), 5 (Disclaimer; Limitation of Liability), 6 (Confidential Information), and 10 (General) and 11 (McAfee Enterprise Defined) shall survive the termination of this Agreement.
11. **McAfee Enterprise Defined.** As used in this Agreement, "McAfee Enterprise" means one of the following legal entities who offer the Product for evaluation purposes to You in the applicable country/region as identified below:

**For customers in North, Central or South America: Musarubra US LLC**, with offices located at 6220 America Center Drive, San Jose, CA. 95002, USA;

**For U.S. public sector customers and healthcare customers located in the United States: McAfee Public Sector LLC**, with offices located at 11911 Freedom Drive, Reston, VA. 20190, USA; and

**For customers in Europe, Middle East, Africa: Musarubra Ireland Limited**, with its registered offices located at Building 2000, City Gate, Mahon, Cork, Ireland;

**For customers in Japan: Musarubra Japan KK**, with its registered office located at Shibuya Mark City West, 1-12-1 Dogenzaka, Shibuya-ku, Tokyo 150-0043, Japan;

**For customers in Asia, other than in Japan, Australia or China: Musarubra Singapore Pte Ltd.**, with a trading address located 238 Thomson Road, #12-01/05 Novena Square, Tower A, Singapore, 307684;

**For customers in Australia: Musarubra Australia Pty Ltd.**, with offices at 40 Mount Street, Level 16, North Sydney, Australia.

*-End of Agreement-*