

# McAfee Technical Support and Maintenance Terms and Conditions

McAfee will provide Technical Support services in accordance with the following terms and conditions (“**Support Terms**”). All capitalized terms not defined herein are defined in the applicable licensing or terms of service agreement.

## 1. Definitions.

- a. “**Authorized Partner**” means any of McAfee’s authorized distributors, resellers or other business partners.
- b. “**Cloud Client Software**” means Software that facilitates Customer’s access and use of the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, and that does not perform functionality without active support or a subscription to the Cloud Services, as required by the specific offering. Cloud Client Software is provided as part of a subscription to Cloud Services, and may or may not necessarily be identified in a Grant Letter.
- c. “**Cloud Services**” means the cloud services that McAfee provides to Customer as specified in one or more Grant Letters. Access to the Cloud Services requires either an active support agreement or an active subscription, as required by the specific offering.
- d. “**Customer**” means the entity which has purchased Products and to which McAfee provides Support.
- e. “**Education Options**” means certain McAfee web based or onsite training courses related to McAfee Products and/or services included in certain Support Levels.
- f. “**Grant Letter**” means any written (electronic or otherwise) confirmation notice that McAfee issues to Customer confirming Products and Support purchased by Customer, including without limitation Customer’s Support Level entitlement, the Grant Number, the Support Period and download details.
- g. “**Grant Number**” means a unique number communicated by McAfee in a Grant Letter confirming a customer’s Support entitlement and is required when accessing Support.
- h. “**Hardware**” means MCAFEE branded hardware equipment purchased from McAfee or its Authorized Partners, but excludes any Software or other intangible products.
- i. “**Product(s)**” means McAfee’s Software and Hardware product specified in a Grant Letter or Cloud Services and Cloud Client Software purchased from McAfee or an Authorized Partner.
- j. “**Support**”, “**Technical Support**” or “**Technical Support and Maintenance**” means the support services for McAfee Products purchased by Customer either from McAfee or from McAfee’s Authorized Partner which are dependent on the Support Level purchased.
- k. “**Software**” means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Customer.
- l. “**Consulting Options**” means certain McAfee services included in certain Support Levels.
- m. “**Support Period**” means the effective time period for which the Customer has purchased Support that is confirmed in a Grant Letter or in the case of Cloud Services means the effective time period for which the customer has purchased the Cloud Services and has an active entitlement and valid account.
- n. “**Support Region**” means any one of the following five (5) regions: (i) North America, (ii) Europe, Middle East and Africa (“EMEA”); (iii) Asia Pacific (“APAC”); (iv) Japan, and (v) Latin America (“LTAM”).
- o. “**Support Level(s)**” means the McAfee Support offering purchased by Customer and defined at: <https://support.mcafee.com/supportoptions>.
- p. “**Upgrade**” means any and all improvements in the Cloud Services or Software which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.
- q. “**Updates**” means updates to the content of the Cloud Services or Software, and include without limitation all DATs (“DATs” or detection definition files, also referred to as signature files, are the code anti-malware software uses to detect and repair viruses, Trojan horses and potentially unwanted programs), signature sets, policy updates, database updates for the Cloud Services or Software which are made generally available to McAfee’s customer base as a part of purchased Support and which are not separately priced or marketed by McAfee.

2. **Provision of Support.** McAfee will provide Support to Customer during the Support Period at the Support Level that has been purchased by Customer and is confirmed to Customer in a Grant Letter or in the case of Cloud Services, based on the initial order or renewal. Customer will not be entitled to receive Support outside of the Support Period.

3. **Updates and Upgrades.** McAfee grants to Customer a non-exclusive, non-transferable license to use Upgrades and Updates provided by McAfee during the Support Period as a part of purchased Support. Such Upgrades and Updates

are subject to the terms of the license granted by McAfee to the Customer for the Software. With the exception of Cloud Services, (a) Customer shall promptly download, distribute and install all Updates as released by McAfee during the Support Period and (b) McAfee strongly suggests that Customer also downloads, distributes and installs all Upgrades as released by McAfee during the Support Period. Customer acknowledges that any failure to do so could result in Customer's inability to receive Updates, future Upgrades and Technical Support and therefore could cause major security risks. An Upgrade may require a hardware upgrade or new platform conversion to function properly.

4. **Supported Versions and End of Life.** The provision of Support is limited to (a) the current version and (b) the immediately preceding version of the Product. Only the current version of Cloud Services will be supported. Notwithstanding any of the foregoing, Support is subject to McAfee's End-of-Life Policy available at <http://support.mcafee.com/eolpolicy>. It is Customer's responsibility to review McAfee's Product Support Lifecycle webpage at: <http://www.mcafee.com/us/support/support-eol.aspx> to determine whether a Product qualifies for Support. Furthermore, Customer proactive Support notification can be accessed by subscribing to McAfee Support Notification Service (SNS) available at <http://support.mcafee.com/sns>.
5. **Response Times.** McAfee uses commercially reasonable efforts to meet the response times set forth in the escalation and response charters listed under <https://support.mcafee.com/charters>. Access to McAfee's websites for the provision of Support may be suspended for brief periods due to maintenance and other factors.
6. **Bug Fixing and Remote Diagnostics.** McAfee uses commercially reasonable efforts to provide work-around solutions or patches to reported problems with Products. With Customer's prior authorization, McAfee may perform remote diagnostics to work on reported problems. In the event Customer declines remote diagnostics, McAfee and Customer may agree to on-site Technical Support which is subject to an additional fee and reasonable travel and expenses, for which the customer is responsible.
7. **Support Period and Expired Support.** The Support Period either begins (i) at the date the Product was purchased or (ii) at the renewal date of the expiration of a previous Support Period. In the event the Support expires, any reinstatement of Support must be purchased to cover the lapsed Support since expiration and be renewed until the Support is current. Support must be purchased within one (1) year after expiration of the previous Support Period. An additional out of compliance fee may be required for lapsed Support.
8. **Support Coverage.** Support is sold based upon the quantity of all Products purchased by Customer. Upon purchasing Support for a Product, Customer must purchase the same Support Level for all Product units owned, used or licensed by Customer that are deployed or in use at the location(s) covered by Support. Some Support Level(s) are available for purchase by Customer per Support Region.
9. **Acquired Company Products.** From time to time McAfee may acquire other companies and continue to support the products licensed or cloud services offered by such companies ("**Acquired Products**"). The Support Level(s) defined herein may not be applicable to the Acquired Products at the time of the acquisition but McAfee may within a reasonable period of time after the acquisition provide a description of the Support Level(s) available for the Acquired Products, which will become applicable once published on the Support webpage.
10. **Exclusions.** McAfee has no obligations to, (a) provide Support where hardware, tools or software other than those supplied or approved by McAfee have been incorporated with the Product (b) provide Support for Hardware damaged by or Hardware failures caused by Customer (c) import or export customer data, create or modify custom business rules or reports, or support custom modifications to databases, active server pages, or other code, components or programs (d) provide Support for problems that cannot be reproduced in running the Product in a configuration meeting published McAfee specifications (e) provide Cloud Services Support for issues arising from any violation of the Cloud Services Agreement or (f) provide Support where Customer is not using the Product in accordance with its license and restrictions on use.
11. **Obligations of Customer.**
  - a. **Support Process:** Customer must report Product problems to McAfee Support organization, and be prepared to provide McAfee with (i) the Grant Number, (ii) the location of the Product, (iii) a detailed description of the problem, (iv) a description of the hardware on which the Software is loaded, including any serial number or service tag number where applicable, (v) the names and versions of any operating systems, networks, and software running with the Software, including patches and fixes, (vi) technical contact information and (vii) a detailed description of the problem. McAfee may request that Customer takes certain actions to determine whether the problem or error is related to the Product, or other item. Customer must reasonably cooperate with

McAfee during this process.

- b. **Access:** Customer shall provide McAfee with sufficient, free and safe access to the Products, Customer's computer systems networks and facilities in the event that it is agreed that McAfee will provide on-site support at Customer's location or facilities or that McAfee will perform remote diagnostics.
- c. **Backup and Restore:** Customer must keep adequate backup copies of data, databases, and application programs and agrees that Customer is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.

**12. Termination.** McAfee reserves the right to immediately terminate Support, without any further obligation to Customer, if Customer tampers with or modifies the Product without prior written authorization of McAfee, or otherwise uses the Products in violation of the applicable agreement or of these Support Terms. McAfee may immediately terminate Cloud Services Support for any breach of the Acceptable Use Policy, as incorporated into the Cloud Services Agreement, or for any other incident giving rise to the termination of the Cloud Services Agreement. Any terms which by their nature extend beyond the termination remain in effect until fulfilled.

**13. Hardware specific terms.**

- a. **Region and Geographic Limitations:** Unless otherwise agreed in writing by McAfee or included as part of the applicable Support Level, Hardware is eligible for service only if it remains in the country where Customer originally installed the Hardware. Geographic restrictions or limitations may apply to certain Hardware Support Levels and are described under <https://support.mcafee.com/hardwarelocationmatrix>.
- b. **Hardware Return:** Prior to returning any Hardware to McAfee for repair or replacement, Customer must ensure that (i) the Hardware is free of any legal obligations or restrictions and of any Customer proprietary or confidential information that prevent McAfee from exchanging, repairing or replacing the Hardware, (ii) Customer has obtained a return authorization from McAfee, including a return material authorization number (a "**RMA Number**"). Hardware returned to McAfee becomes the property of McAfee at the time it is received by McAfee and Customer shall assume ownership of all replacement Hardware provided by McAfee to Customer upon shipment by McAfee.
- c. **Restrictions:** Customer must not, nor permit anyone else, to remove, alter, or obscure any proprietary notices or instructional labels on the Hardware without written authorization from McAfee. Customer must not install, nor permit the installation of additional hardware or software on the Hardware without written authorization from McAfee or breach any tamper seal on the Hardware.
- d. **Inspection Period:** McAfee reserves the right to inspect Hardware for which Support has lapsed for more than ninety (90) days by itself or by its agents in consideration of a separate fee and to request Customer to install the most current Upgrades and Updates before McAfee agrees to renew Support for the Hardware.

**14. Resident Customer Success Manager, Resident Support Account Manager and Resident Product Specialist Terms.**

- a. If Customer purchases a Resident Customer Success Manager ("**RCSM**"), Resident Support Account Manager ("**RSAM**") or Resident Product Specialist ("**RPS**"), McAfee will provide a RCSM, RSAM or RPS to provide on-site certain Support that Customer has purchased from McAfee. Additional information on the description and scope of the RCSM's, RSAM's and RPS's roles and responsibilities can be found at <http://support.mcafee.com/documentation>.
- b. The RCSM, RSAM or RPS will work during normal business hours as agreed upon between McAfee and Customer. The RCSM, RSAM or RPS may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations or meetings. During this time out-of-the-office, or should the RCSM, RSAM's or RPS's employment with McAfee end, McAfee will provide to Customer the name and phone number of a temporary Support Account Manager ("**SAM**") that will cover Customer's account until the RCSM, RSAM or RPS returns. The temporary SAM will provide Support services remotely.
- c. Customer acknowledges and understands that the timeline to on-board at Customer's location is approximately ninety (90) days from the time of the notification of the requirement. During this period, McAfee will assign an interim SAM to facilitate the Support services until the parties can agree upon the individual to be placed as an RCSM, RSAM or RPS. McAfee and Customer will work together in good faith to select the RCSM, RSAM or RPS. In the event Customer rejects the candidate or delays in the selection of a reasonable candidate McAfee has offered for consideration, McAfee will assign an interim SAM. For avoidance of doubt, the interim SAM will not be an on-site resource and may be a shared resource with other McAfee customers.
- d. Customer acknowledges that McAfee employees are quickly deployed, and any delay in the selection of a candidate may: (1) result in Customer not being able to have its desired individual perform the Support services; (2) result in the use of an interim SAM (as stated above); and (3) hinder the performance of the Support Services as described herein. Customer also acknowledges that it might not be possible to retain a particular individual for the duration of the term of the Support Period. No fees will be refunded or credit given for the time period

that an interim SAM is used.

**15. Consulting and Education Options.**

- a. If Customer purchases a level of Support that includes Consulting and Education Options, Customer may choose from the applicable options located at: [www.mcafee.com/psp-options](http://www.mcafee.com/psp-options).
- b. Solution Success Services and Education Services must be redeemed in full prior to the expiration of the Support Period for the applicable Support Level purchased or such services will be forfeited.

**16. Warranty.** MCAFEE WARRANTS THAT THE SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. FOR ANY BREACH OF THIS WARRANTY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND MCAFEE'S ENTIRE LIABILITY SHALL BE THE RE-PERFORMANCE OF THE NON-CONFORMING SUPPORT. MCAFEE SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF CUSTOMER PROVIDES WRITTEN NOTICE OF THE BREACH TO MCAFEE WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT. THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY AND REPLACES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, CONFORMITY TO ANY REPRESENTATION, SKILL AND CARE. MCAFEE DOES NOT WARRANT OR GUARANTEE THAT SUPPORT WILL BE FREE FROM ERRORS OR DEFECTS OR THAT THE SUPPORT WILL PROTECT AGAINST ALL POSSIBLE THREATS.

Some states or jurisdictions do not allow the exclusion of express or implied warranties, so the above disclaimer may not apply to you. IN THAT EVENT SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW (IF ANY).

**17. Limitation of Liability; Confidentiality; Audit; Export Control.** Customer agrees to these Technical Support and Maintenance Terms and Conditions as part of one or more product licenses or services agreements between McAfee and the Customer ("**Underlying Agreement**"). THE LIMITATION OF LIABILITY, CONFIDENTIALITY, PRIVACY, AUDIT AND EXPORT CONTROL PROVISIONS OF THE RELEVANT UNDERLYING AGREEMENT ARE INCORPORATED INTO THESE TECHNICAL SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.

**18. General.**

- a. **Recording:** In providing Support, McAfee may record all or part of telephone calls between Customer and McAfee for quality assurance and training purposes in compliance with applicable laws.
- b. **Assignment:** The provision of Support is not assignable by Customer without the prior written consent of McAfee. Any attempt of assignment by Customer without such consent will be void. McAfee may subcontract its obligations to provide Support hereunder to another party.
- c. **Governing law:** All disputes arising out of or relating to this Agreement or its subject matter will be governed by the substantive laws: (a) of the State of New York, if you purchased the license to the Software in the United States, Mexico, Central America, Canada, South America or the Caribbean, (b) of England and Wales, if you purchased the license to the Software in Europe, Middle East, Africa, Asia (other than Japan) or the region commonly referred to as Oceania and (c) of Japan, if you purchased the license to the Software in Japan, without giving effect to its rules relating to conflict of laws. If you purchased the license to the Software in any other country, then the substantive laws of the Republic of Ireland shall apply, unless another local law is required to be applied. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. The United States District Court for the Southern District of New York, when New York law applies, the courts in England, when the law of England and Wales applies, the courts in the Republic of Ireland, when the law of Ireland applies, and the courts in Japan, when the law of Japan applies, shall each have exclusive jurisdiction over all disputes arising out of or relating to this Agreement or its subject matter.

**19. Entire Agreement.** The Support Terms and any additional terms referenced herein constitute the entire agreement between Customer and McAfee with regard to Support, and supersedes all prior negotiations, agreements, and understandings with respect to the subject matter hereof.