

**COUNTY OF MONTEREY STANDARD AGREEMENT
(MORE THAN \$100,000)**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

Sable Computers Inc., dba KIS (Keep IT Simple) ,

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide McAfee data protection software enhanced support and licensing for all County users.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$ 180,731.40.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from January 23, 2018 to January 22, 2021, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A: Quote Sheet and McAfee Product Technical Support and Maintenance Terms and Conditions

Exhibit B: Conflicting Terms

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal,

state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Daniel Kern, Chief Security and Privacy Officer	Brad Goubeau, Enterprise Account Manager
Name and Title	Name and Title
County of Monterey, Information Technology Department 1590 Moffett Street, Salinas CA 93905	Sable Computers, Inc. dba KIS (Keep IT Simple) 4027 Clipper Court Fremont, CA 94538
Address	Address
831-796-1449	510-933-1900
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

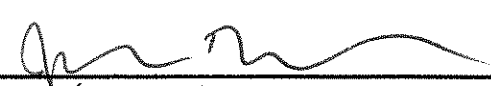
Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

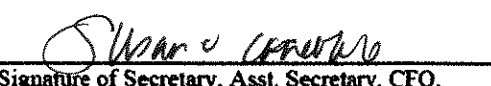
CONTRACTOR

Sable Computers, Inc. dba KIS (Keep IT Simple)
Contractor's Business Name*

By: _____

(Signature of Chair, President, or Vice-President)*

John Marciano - C.O.O.
Name and Title

Date: Oct. 26, 2017

By: _____

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Susan Conover, CFO
Name and Title

Date: 10/26/17

County Board of Supervisors' Agreement Number: _____, approved on (date): _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor-Controller is required

³Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

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. "**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.
- f. "**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.
- g. "**Hardware**" means MCAfee branded hardware equipment purchased from McAfee or its Authorized Partners, but excludes any Software or other intangible products.
- h. "**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.
- i. "**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.
- j. "**Software**" means each McAfee software program in object code format and components licensed by McAfee or its Authorized Partners to Customer.
- k. "**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.
- l. "**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").
- m. "**Support Level(s)**" means the McAfee Support offering purchased by Customer and defined at: <https://support.mcafee.com/supportoptions>.
- n. "**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.
- o. "**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 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 notifications can be accessed by subscribing to McAfee Support Notification Service (SNS) available at <http://sns.snssecure.mcafee.com>.
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 scheduled 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 is 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 or (e) provide Cloud Services Support for issues arising from any violation of the Cloud Services Agreement.
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 Support Account Manager and Resident Product Specialist Terms.**
- a. If Customer purchases a Resident Support Account Manager ("**RSAM**") or Resident Product Specialist ("**RPS**"), McAfee will provide an RSAM or RPS to provide on-site certain Support that Customer has purchased from McAfee. Additional information on the description and scope of the RSAM's and RPS's roles and responsibilities can be found at <http://support.mcafee.com/documentation>.
 - b. The RSAM or RPS will work during normal business hours as agreed upon between McAfee and Customer. The 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 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 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 RSAM or RPS. McAfee and Customer will work together in good faith to select the 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 credits given for the period that an interim SAM is used.

15. Malware Awareness Program Terms.

- a. If, for the Support Period, Customer has purchased (1) Support for McAfee's ePolicy Orchestrator Product ("ePO"), and (2) either (a) an RSAM, (b) an RPS, or (c) a Malware Awareness Program ("MAP"), as part of Support (as defined hereunder) McAfee will produce for Customer, once during the Support Period at a time agreed by Customer and McAfee, a MAP report in McAfee's then-current standard form using data collected by McAfee through Customer's deployment of ePO.
- b. McAfee may change the standard form of the MAP report at McAfee's discretion to reflect developments in malware and other security threats, information captured by ePO, or for other reasons identified by McAfee.
- c. For the avoidance of doubt, (1) a license to ePO must be purchased separately by Customer in order for Customer to purchase Support for ePO, (2) a license to ePO is not included with Support, with the MAP report, or in connection with the MAP, but must be purchased separately by Customer, and (3) MAP is not included as part of Support unless Customer has separately purchased Support for ePO and has separately purchased an RSAM, an RPS, or MAP.
- d. The MAP report and its contents, excluding Customer's Confidential Information, are strictly confidential to McAfee, and, except to the extent expressed in the next sentence, McAfee owns and reserves all right, title, and interest therein and thereto. Upon delivery of the MAP report to Customer, McAfee grants to Customer a worldwide, royalty-free, perpetual, non-exclusive license under McAfee's intellectual property rights to use and make a reasonable number of copies of the MAP report, in the form originally furnished by McAfee to Customer, for Customer's own internal business purposes.
- e. THE MAP AND MAP REPORTS ARE PROVIDED TO CUSTOMER FOR CUSTOMER'S INFORMATIONAL PURPOSES ONLY AND ON AN "AS IS" BASIS. MCAFEE DOES NOT REPRESENT OR WARRANT THAT MAP OR ANY MAP REPORT WILL IDENTIFY ALL MALWARE OR VULNERABILITIES. ANY OBSERVATIONS OR RECOMMENDATIONS GIVEN AS A PART OF MAP OR A MAP REPORT ARE GENERAL AND ARE NOT INTENDED AS SPECIFIC RECOMMENDATIONS OR COURSES OF ACTION. CUSTOMER'S RELIANCE ON, ACTION ON OF, OR LACK OF ACTION ON ANY SUCH OBSERVATIONS OR RECOMMENDATIONS IS AT ITS SOLE RISK.

- 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.

EXHIBIT-B

CONFLICTING TERMS

Conflicting Terms: Where the terms of the Agreement and the terms of Exhibit A, entitled "McAfee Technical Support and Maintenance Terms and Conditions," conflict, the terms of Exhibit A shall prevail and govern the rights and obligations of the parties.