Creditor Name Software as a Service (SaaS) Agreement

BY ACCESSING OR USING THE SERVICES YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON, COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

**Creditor Name** (as defined below) and Customer (as identified in the Grant Letter) agree to the following Creditor Name SaaS Subscription Agreement (“Subscription Agreement”), the applicable Supplemental Terms and Conditions included with the pertinent **Creditor Name** Service (“Supplemental Terms”) and the terms as specified in the Grant Letter.

1. **DEFINITIONS.**  For purposes of the Agreement, the following definitions apply:
   1. “Agreement” means this Subscription Agreement, the applicable Supplemental Terms, the Grant Letter, Services Order Form and any materials available on the **Creditor Name** website that are specifically incorporated by reference.
   2. “Annual Customers” means Customers who have a valid annual or multi-year contract for Services.
   3. “Channel Partner” means the **Creditor Name** partner identified in the Grant Letter through which the Customer purchased the Services.
   4. “Customer Data” means any data provided by Customer to **Creditor Name** under this Agreement. Customer Data includes Data as defined in paragraph 12.
   5. “Documentation” means explanatory materials created by **Creditor Name** in printed, electronic or online form that accompany the Services or Software.
   6. "Email" means any SMTP message sent or received via the Services.
   7. “Grant Letter” means a confirmation notice issued electronically by **Creditor Name** to the Customer, confirming the Licensed Product purchased and access details. Grant Letter includes services order forms or other purchasing documentation entered into between Customer and **Creditor Name** or Channel Partner for the Services or Licensed Product.
   8. "Junk Email" means unsolicited commercial Email.
   9. “Licensed Product” means all **Creditor Name** Services, Software, Updates or Documentation to which Customer has rightful access through a valid Grant Letter.
   10. "Malware" means applications, executable code, or malicious content that **Creditor Name** deems to be harmful.
   11. “**Creditor Name**” means (a) **Creditor Name**, a **Creditor’s State** corporation, with offices located at **Creditor’s Street Address, City, State, Zip Code**, USA if the SaaS is purchased in the United States, Mexico, Central America, South America, or the Caribbean. “Monthly Customer” means Customers who have a valid monthly contract for Services with no annual or multi-year commitment.
   12. "Node" means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homeworker/teleworker home-based systems, file and print servers, e-mail servers, Internet gateway devices, storage area network servers (SANS), terminal servers and portable workstations connected or connecting to the server(s) or network. Node also means the number of Users or seats with access to the Services.
   13. "Open Proxy" means an HTTP server that allows third-party relay or proxy of web traffic.
   14. "Open Relay" means an SMTP Email server that allows third-party relay of Email messages.
   15. “Services” means "Software as a Service" or "SaaS", which consists of activities including email and web security, system administration, system management and system monitoring that **Creditor Name** performs using software installed on **Creditor Name** systems along with any optional add-on services, and as ordered by Customer in one or more Grant Letters.
   16. “Software” means programs, applications or object code obtained from **Creditor Name** and installed in the Customer’s environment, including Updates and Upgrades and for the purposes of facilitating the delivery or functionality of the Services, such as plug-ins (as such terms are defined in the **Creditor Name** Technical Support and Maintenance Terms).
   17. "Subsidiary" refers to any entity controlled by Customer through greater than fifty percent (50%) ownership of the voting securities.
   18. “Support” means technical support provided as described in the then-current **Creditor Name** Technical Support and Maintenance Terms, which are posted on Creditor Name’s website at **Creditor’s Link to Terms page on website**.
   19. “Term” means the time period during which you have the right to receive the Services specified in the Grant Letter.
   20. “Updates” are related to content of the Product 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 Products which are made generally available to **Creditor Name**’s customer base as a part of purchased Support and which are not separately priced or marketed by **Creditor Name**.
   21. “Upgrade” means any and all improvements in the Products which are made generally available to Creditor Name’s customer base as a part of purchased Support and which are not separately priced or marketed by Creditor Name.
   22. “User” for **Creditor Name** web and email products is defined as any individual specifically identified as capable of sending HTTP requests to the Internet to be processed by a **Creditor Name** product, regardless of whether the individual is actively using the product at any given time. In cases where multiple unique users use the same workstation to access the Internet, such as educational institutions and libraries, that workstation represents a single ‘user’. For all other products, including SaaS Endpoint, “User” means a unique individual within a company or other legally recognized entity (“Entity”) where (1) Entity has acquired a valid license(s) to use the Software and/or Services, and (2) Entity has authorized the individual to use the Software and/or Services.
2. **RIGHT OF USE AND RESTRICTIONS.**
   1. Right to Access and Use Services.  Subject to the terms of this Agreement, **Creditor Name** grants Customer a royalty-free, nonexclusive, nontransferable, worldwide limited term right to use the Services described in the Grant Letter, for up to the number of Users or Nodes identified on the Grant Letter, solely for Customer’s internal business use during the Term. Unless otherwise specified by **Creditor Name**, no Software will be delivered to the Customer as part of the Services.
   2. Right to Install and use Software.  Subject to the terms of this Agreement, **Creditor Name** grants Customer a royalty-free, nonexclusive, nontransferable, worldwide limited term license to install Software on equipment owned or operated by or on behalf of Customer, as needed to deliver the Licensed Products, Services or functionality described in the relevant Grant Letter. Copies of the Software may be made as required for disaster recovery purposes. The Software must be de-installed and destroyed at the end of the Term. If Customer enters into a contract in which a third party manages Customer’s information technology resources ("Managing Party"), Customer may transfer all its rights to use the Software to such Managing Party, provided that (a) the Managing Party only uses the Services for Customer’s internal operations; (b) the Managing Party agrees to comply with this Agreement, and (c) Customer provides **Creditor Name** with written notice that a Managing Party will be using the Software on Customer’s behalf.
   3. Updates and Upgrades..  Customer must be current in the payment of Support services fees for the Software, or have an active subscription to the Services, as applicable, to receive Updates or Upgrades.
   4. User Licenses.  User licenses cannot be shared or used by more than one individual User but may be reassigned to new Users who are replacing former Users that have been terminated or otherwise no longer use the Software or Services.
   5. Subsidiary Liability.  Customer’s Subsidiaries may use the Services but Company remains directly and fully liable for each subsidiary’s compliance with and breach of this Agreement.
   6. Restrictions.  Customer may not access the Software or Services if Customer is a direct competitor of **Creditor Name**, or for monitoring the availability, security, performance, functionality, or for any other benchmarking or competitive purposes without **Creditor Name**’s express written permission. Customer will not: (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make the Software or Services available to any third party; (ii) use systems as an Open Proxy or Open Relay; (iii) modify, decompile, reverse engineer, or copy the Software or Services, or any of its components; (iv) use the Software or Services to conduct fraudulent activities; (v) attempt to gain unauthorized access to the Software or Services, engage in any denial of service attacks, or otherwise cause immediate, material or ongoing harm to **Creditor Name**, its provision of the Software or Services, or others; (vi) average over 100MB of email traffic per second per user in a 24 hour period on **Creditor Name** infrastructure providing the Services, unless Customer has agreed to bandwidth overage charge rates as set forth in a Grant Letter; (vii) impersonate or misrepresent an affiliation with a person or entity; (viii) use the Software or Services to initiate or propagate Malware; (ix) use the Software or Services for any purpose that violates applicable law or regulation, infringes on the rights of any person or entity, or violates this Agreement; (each of (i) to (ix), a "Prohibited Use"). All rights not expressly granted to Customer are reserved by **Creditor Name** and its licensors.
   7. Right to Use Customer Data.  Customer hereby grants **Creditor Name** a limited, non-exclusive, royalty-free, license to access and use the Customer Data solely as necessary for **Creditor Name** to (i) provide the Software, Services and technical support to Customer during the Term; and (ii) for the aggregation purposes set forth in Section 12 below.
3. **BETA RELEASES.** **Creditor Name** reserves the right to materially change or discontinue Software or Services designated in Beta stage at any time and without notice to Customer. Access or use of Software or Services identified as not generally available for commercial use, such as “Beta” or “Pre-Release” (“Beta Product”), is restricted to Customer's internal performance evaluation of the Beta Product. Customer's access to the Beta Product may be interrupted during maintenance periods. **Creditor Name** is not obligated to finally release any version of the Beta Product. Customer will report to **Creditor Name** unusual, unplanned, or out of the ordinary events observed in the Beta Product. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE BETA PRODUCTS MAY CONTAIN BUGS, ERRORS AND DEFECTS AND ARE NOT EXPECTED TO FUNCTION WITHOUT INTERRUPTION.
4. **EVALUATION.** If Customer has signed up for an evaluation of the Software or Services, then the provisions of this paragraph shall apply and shall supersede any other conflicting term of this Agreement. Customer’s use of the evaluation is limited to thirty (30) days unless otherwise agreed to in writing by **Creditor Name**. Customer acknowledges that the evaluation may contain errors or other problems that could cause system or other failures and data loss. Consequently, evaluation Software and Services are provided to Customer solely on an "AS-IS" basis, and **Creditor Name** disclaims any warranty or liability obligations to Customer of any kind. Customer is not eligible for any Support for evaluation Software or Services. WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, **CREDITOR NAME**'S LIABILITY AND THAT OF ITS SUPPLIERS AND AUTHORIZED PARTNERS SHALL BE LIMITED TO THE SUM OF FIFTY (50) DOLLARS (OR THE THEN CURRENT VALUE IN THE RELEVANT LOCAL CURRENCY) IN TOTAL.
5. **CUSTOMER OBLIGATIONS**
   1. a) Customer is responsible for all activity occurring under Customer’s Software, Services and Support accounts. Customer will provide **Creditor Name** with all information and assistance required to supply the Software or Services or enable Customer’s use of the same. Customer will immediately notify **Creditor Name** of any: (i) unauthorized account use or other suspected security breach; (ii) unauthorized use, copying or distribution of Software, accompanying documentation or Customer Data; and (iii) unusual performance of the Software or Service observed by Customer.
   2. b) Customer must obtain all necessary rights and permissions from Users. Customer represents and warrants that: (i) Customer has the legal rights and applicable consents to provide Customer Data to **Creditor Name**, (ii) Customer complies with all applicable laws for processing and transferring Customer Data to **Creditor Name** and (iii) Customer retains adequate back-ups of Customer Data. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. The Services rely on Customer Data as supplied by Customer, and **Creditor Name** is not liable for the content of Customer Data. **Creditor Name** does not assume any duty or obligation to correct or modify Customer Data.
   3. c) Customer will provide Creditor Name contact information for Customer's system administrator, who is authorized to provide the information required to configure and manage the Services ("System Administrator"). **Creditor Name** will provide Customer with a confidential access code to the administration tool, which may only be accessed by the System Administrator.
   4. d) Customer agrees to provide current and complete account Users’ information as necessary for Creditor Name to manage Customer’s account. Customer agrees to accept **Creditor Name** emails relevant to Customer’s receipt of the Services at the e-mail address specified by its System Administrator.
   5. e) Customer agrees that **Creditor Name** may rely on all information provided to **Creditor Name** by the Customer from the designated e-mail addresses. **Creditor Name** may provide all notices, statements, and other communications arising under this Agreement (other than legal notices) to Customer through either e-mail, posting on the Services or other electronic transmission.
6. **TERM AND RENEWAL** The Initial Term of this Agreement is specified in the Grant Letter (the "Initial Term"). This Agreement will automatically renew for successive terms of equal length as the Initial Term (each a "Renewal Term") unless either Customer or Channel Partner provides **Creditor Name** notice of non-renewal at least five (5) days prior to the end of the then current Term. Any User subscriptions added during a Term will co-terminate with the preexisting Term.
7. **FEES; INVOICE; AUDIT.** Unless Customer is purchasing the Licensed Products through a Channel Partner, in which case payment obligations shall flow exclusively between Channel Partner and Customer, Customer will pay **Creditor Name** the fees set forth in the Grant Letter within thirty (30) days of the invoice date. Late payments are subject to interest of 1.5% per month or the highest rate permitted by law, whichever is lower. All payment obligations are non-cancelable and non-refundable. If Customer believes an invoice is incorrect, Customer must contact **Creditor Name** in writing within thirty (30) days of the date of invoice to be eligible to receive an adjustment or credit. The fees for a Renewal Term will be equal to the fee in effect during the Initial Term unless **Creditor Name** has given Customer at least thirty (30) days prior written notice of a fee increase. Fees are exclusive of all taxes and Customer is responsible for payment of all such taxes, excluding only U.S. taxes based solely on **Creditor Name**’s income.  
     
   Creditor Name has the right, at its expense, to audit Customer's compliance with the terms of this Agreement. If any audit reveals that Customer owes fees to **Creditor Name**, Customer will promptly remit such underpaid amounts, including any interest owed for overdue payments. Customer consents to **Creditor Name**’s disclosure of such audit results, as needed. If technically available, customer will provide a system generated report verifying customer's License Product deployment, such request to occur no more than two (2) times per year.
8. **SUSPENSION OF SERVICE.** **Creditor Name** may suspend the Services: (a) if **Creditor Name** deems it necessary to prevent or terminate any Prohibited Use; or (b) upon notice to Customer if: (i) Customer commits a material breach of this Agreement; or (ii) if **Creditor Name** receives notice that Customer is in material breach of the Agreement. Suspension of Services shall be without prejudice to any rights or liabilities accruing prior to or during the suspension, including Customer's obligation to pay fees.   
     
   **Creditor Name** may temporarily suspend the Services for maintenance purposes. **Creditor Name** will use commercially reasonable efforts to minimize any such disruption of Services. Upon suspension for any reason, **Creditor Name** will provide Customer with written notice specifying the reason for the suspension.
9. **TERMINATION.** **Creditor Name** may terminate this Agreement for cause immediately upon notice to Customer if: (a) Customer commits a material breach of this Agreement and fails to cure such breach within five (5) business days after Customer’s receipt of the written notice specifying the breach; (b) Customer becomes insolvent; or (c) Customer makes an unauthorized assignment of this Agreement. Upon termination of this Agreement, Customer agrees that Creditor Name has no obligation to retain Customer Data, which may be irretrievably deleted. Customer is solely responsible for retrieving Customer Data in its account.
10. **TECHNICAL SUPPORT SERVICE.** The then-current **Creditor Name** Technical Support and Maintenance Terms apply to the Software and Services. The **Creditor Name** Technical Support and Maintenance Terms are incorporated by reference and can be found at: **Creditor’s Technical Support and Maintenance Terms website address**. After the support or Services subscription period expires, Customer has no further rights to receive any Updates or Upgrades.
11. **CONFIDENTIALITY.** “Confidential Information” means any business materials, data, or information of a party to this Agreement that is disclosed to the other, except for information that is: (a) publicly available or later becomes publicly available other than through breach of this Agreement; (b) previously known to or independently developed by the Receiving Party; or (c) subsequently obtained by the Receiving Party through a third party without obligations of confidentiality. Customer acknowledges that **Creditor Name**'s pricing, services access codes and Intellectual Property are **Creditor Name**’s Confidential Information. The party receiving Confidential Information (“Receiving Party”) will exercise the same degree of care and protection for the Confidential Information of the party that has disclosed Confidential Information (“Disclosing Party”) that it exercises with its own Confidential Information but no less than a reasonable degree of care. The Receiving Party may not directly or indirectly disclose, copy, distribute, republish, sell, license or otherwise allow any third party access to such Confidential Information. The Parties agree to maintain the confidentiality as described herein for seven (7) years after the termination of this Agreement. Notwithstanding the above, either party may disclose Confidential Information: (1) to its employees, contractors or agents who have a need to know and are subject to substantially similar obligations of confidentiality; and (2) if required by law (including a court order or subpoena), provided, the Receiving Party, where lawfully permitted, promptly notifies the Disclosing Party in time to review and challenge the potential disclosure.
12. **PRIVACY.** **Creditor Name** reserves the right to use and store aggregated and anonymized Customer traffic to maintain or improve the Services. Some such information may be shared with third parties as a part of a larger set of statistics (for example, statistics that indicate amount of traffic, success rates, and size of **Creditor Name**'s customers). Customer agrees that such data is not Confidential Information. **Creditor Name** may also use a limited sampling of Customer Data to support internal research for improved spam detection. Customer may opt out of such research through the console. The Software, Services or Support may employ applications and tools to collect personally identifiable, sensitive or other information about Customers and users of the Software and Services (including, Customer and users’ name, address, e-mail address and payment details), their computers, files stored on their computers, or their computers’ interactions with other computers (including, information regarding network, licenses used, hardware type, model, hard disk size, CPU type, disk type, RAM size, operating system, versions, BIOS data, scanners, database size, system telemetry, device ID, IP address, location, content, **Creditor Name** components, processes, Updates, Upgrades, usage patterns and services information, information about third party products installed, extracts of logs created by **Creditor Name**,) (collectively, “**Data**”). **Creditor Name** may use cookies to store user session information, access codes and application settings to ease site navigation processes.  
      
    The collection of this Data may be necessary to provide Customers with the relevant Support or Service as ordered (including, detecting and reporting threats and vulnerabilities on Customer’s computer network), improve overall security for Customers and users of the Services. Customer may be required to uninstall the Software or disable Support or its Service to stop further Data collection that supports these functions.  
      
    By entering into this Agreement, or using the Support, Software or Services, Customer agrees to the **Creditor Name** Privacy Policy on the **Creditor Name** web site ([**Creditor**](http://www.mcafee.com/) **website address**) and to the collection, processing, copying, backup, storage, transfer and use of Data by **Creditor Name** and its service providers, in, from and to the United States, Europe, or other countries or jurisdictions, potentially outside of the Customer or User’s own, as part of the Support, Software or Service delivery. Customer is solely responsible for securing any privacy-related rights and permissions from its Users as may be required by local law. **Creditor Name** will treat personally identifiable information in accordance with the **Creditor Name** privacy policy on the **Creditor Name** web site ([**Creditor**](http://www.mcafee.com/) **website address**).
13. **INTELLECTUAL PROPERTY.** The Software and Services (including any associated, documentation, hardware, websites, passwords, components and tools) (“**Creditor Name** Property”) are the sole and exclusive property of **Creditor Name** or its licensors, who retain sole ownership of all right, title and interest in **Creditor Name** Property, as well as any derivative works thereof. These ownership rights include copyrights, patent rights, trademark and service mark rights, trade secret rights, moral rights, and all other intellectual property and proprietary rights ("Intellectual Property"). Customer agrees, on behalf of itself and its Users, that it will take no action inconsistent with **Creditor Name**’s Intellectual Property rights. Customer agrees that **Creditor Name** has the unrestricted right to use feedback or recommendations provided by Customer in **Creditor Name**’s sole discretion, without notice to, payment to or consent from Customer and that such feedback is not subject to the Confidential Information provisions of this Agreement. Customer agrees not to disclose such feedback to any third party without the express written consent of **Creditor Name**.  
      
    Customer retains all right, title and interest in and to Customer Data.
14. **LIMITED WARRANTY, REMEDIES AND DISCLAIMER.**
    1. LIMITED WARRANTY.  **Creditor Name** warrants that the Services will substantially conform with the Documentation and be provided in a manner consistent with generally accepted industry standards.
    2. LIMITATION OF REMEDY.  The sole and exclusive remedy for any claim for breach of warranty under this Agreement is for **Creditor Name** to modify the Services to conform with the Documentation. If **Creditor Name** is unable to do so, **Creditor Name** may, in its own discretion: (1) allow Monthly Customers to terminate the Agreement; or (2) for Annual Customers, provide Service Credits that extend the term of the Customer’s Service Agreement by thirty (30) days upon renewal of the annual Agreement.
    3. DISCLAIMER.  WITH THE EXCEPTION OF THE LIMITED WARRANTY, ANY USE BY CUSTOMER AND USERS OF THE SOFTWARE AND SERVICES IS AT CUSTOMER’S OWN RISK. THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. **CREDITOR NAME** AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, NON-INFRINGEMENT, TITLE, AND OWNERSHIP. CREDITOR NAME AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICES OR SOFTWARE: (1) ARE ERROR-FREE; (2) WILL PERFORM UNINTERRUPTED; (3) WILL MEET CUSTOMER’S REQUIREMENTS.
    4. The Services and Software may include programs or code that are licensed under an Open Source Software ("OSS") license model. OSS programs and code are subject to the terms, conditions and obligations of the applicable OSS license, and are SPECIFICALLY EXCLUDED FROM ALL WARRANTY AND SUPPORT OBLIGATIONS DESCRIBED ELSEWHERE IN THIS AGREEMENT.
    5. Without limiting the foregoing, Customer acknowledges that Malware is regularly created and distributed and that the Software and Services are intended to detect only specific known Malware and some unknown Malware behavior patterns. Creditor Name does not warrant that the Software or Services will detect all Malware. In addition, false Malware detections might occur. The Software and Services may not be able to scan web traffic, email or attachments, under the direct control of the website owner or the email sender (such as encrypted components).
15. **THIRD PARTIES.** THE SOFTWARE AND SERVICES MAY CONTAIN INDEPENDENT THIRD PARTY PRODUCTS AND RELY UPON THEM TO PERFORM CERTAIN FUNCTIONALITY, INCLUDING MALWARE DEFINITIONS OR URL FILTERS AND ALGORITHMS. CREDITOR NAME MAKES NO WARRANTY AS TO THE ACCURACY OF ANY SUCH THIRD PARTY INFORMATION.
16. **INTERNET DELAYS.** SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAY AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. **CREDITOR NAME** IS NOT REPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS.
17. **SECURITY.** No data transmission over the Internet can be guaranteed to be secure. **Creditor Name** is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside **Creditor Name**’s control. Customer is responsible for maintaining the security of its networks, servers, applications and access codes.
18. **PARTNER ACCESS.** Customer acknowledges and agrees that if the Services are purchased through a Creditor Name Partner, the Partner may have access to: (1) Customer Data, including email and web traffic; and (2) system administration of Customer’s account, including the ability to configure email, web and archiving policies.
19. **LIMITATIONS OF LIABILITY.** EXCEPT FOR INDEMNIFICATION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CREDITOR NAME'S AND ITS LICENSORS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, IS LIMITED: (1) FOR MONTHLY CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWO MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY; AND (2) FOR ANNUAL CUSTOMERS, TO THE FEES PAID UNDER THIS AGREEMENT FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION IS THE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. IN NO EVENT WILL **CREDITOR NAME** OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING DAMAGES ARISING FROM LOSS OR DELAYED USE OF EMAIL, WEB TRAFFIC OR DATA; LOST PROFITS, SAVINGS OR REVENUE; DAMAGE TO EQUIPMENT; FALSE POSITIVES OR FALSE NEGATIVES; LOSS OF OR DAMAGE TO RECORDS OR DATA; RE-PROCUREMENT COSTS; AND THIRD PARTY CLAIMS AGAINST CUSTOMER) HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, EVEN IF CREDITOR NAME HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT WILL LIMIT **CREDITOR NAME**’S LIABILITY FOR DEATH AND PERSONAL INJURY.
20. **INDEMNIFICATION.** Customer agrees to indemnify, defend, and hold **Creditor Name** harmless from all claims, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any: (i) Customer breach of this Agreement; (ii) Customer Data passing to or from Customer through the Services or **Creditor Name**'s network; (iii) taxes arising from the Software and Services whether now in effect or imposed in the future (excluding taxes based on **Creditor Name**'s income); (iv) failure by Customer to obtain all necessary consents related to Customer Data; (v) claims by third parties arising from Customer's use of the Software or Services (excluding claims that the Software or Services, as provided by **Creditor Name**, infringe third party intellectual property rights); and (vi) any reasonable costs and attorneys’ fees required for **Creditor Name** to respond to a subpoena, court order or other official government inquiry regarding Customer Data or Customer’s use of the Software or Services.  
      
    **Creditor Name** shall defend and hold Customer harmless from any claim by a third party that the Software or Services infringe any patent, copyright or trade secret of that third party. The foregoing obligation of Creditor Name does not apply with respect to Software, Services or portions or components thereof: (i) not supplied by **Creditor Name**; (ii) used in a manner not expressly authorized by this Agreement or the accompanying Documentation (iii) made in accordance with Customer’s specifications; (iv) modified by anyone other than **Creditor Name**, if the alleged infringement relates to such modification; (v) combined with other products, processes or materials where the alleged infringement would not exist but for such combination; or (vi) where Customer continues the allegedly infringing activity after being notified thereof and provided with modifications that would have avoided the alleged infringement.  
      
    In the event the Software or Services are held by a court of competent jurisdiction to constitute an infringement or use of the Software or Services is enjoined, **Creditor Name** shall, at its sole option, do one of the following: (i) procure the right to continued use; (ii) modify the Software or Services so that their use becomes non-infringing; (iii) replace the Software or Services with substantially similar products in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to **Creditor** **Name** shall refund the pro-rata unused portion of the Software or Services.  
      
    The Parties may request indemnification under this provision, provided they: (a) promptly give written notice of the claim to the indemnifying party; (b) give sole control of the defense and settlement to the indemnifying party (provided any settlement relieves the indemnified party of all liability in the matter); (c) provide all available information and reasonable assistance; and (d) have not previously compromised or settled such claim.  
      
    THIS SECTION STATES CREDITOR NAME’S ENTIRE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT AND MISAPPROPRIATION CLAIMS.
21. **WAIVER.** Any waiver of rights under this Agreement must be in writing. Failure to exercise or enforce any right under this Agreement will not be deemed a waiver of that Party’s right nor bar the exercise or enforcement of it at any time thereafter.
22. **JURISDICTION/GOVERNING LAW; COSTS; LIMITATION PERIOD.** This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in **Creditor’s State**, if you purchased the Software or Services in the United States, Mexico, Central America, South America, or the Caribbean; The United States District Court for the **Creditor’s District, State** law applies shall have non-exclusive jurisdiction over all disputes relating to this Agreement.
23. **NOTICE AND ACCURACY OF INFORMATION.** All legal notices to **Creditor Name** under this Agreement must be addressed to “Attention: Legal Department” **Creditor’s Street Address, City, State, Zip Code**. Notices shall be deemed effective upon receipt.
24. **MODIFICATION TO TERMS.** **Creditor Name** reserves the right to modify the terms and conditions of this Agreement at any time, effective upon the posting of an updated version at [**Creditor’s**](http://www.mcafee.com/us/about/legal/saas-terms.aspx) **website address**. Customer is responsible for regularly reviewing this Agreement. Continued use of the Software or Services after any such change shall constitute Customer’s consent to the changes.
25. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. **Creditor Name** retains the right to assign this Agreement in its sole discretion. Customer may not assign this Agreement without the prior written permission of **Creditor Name.**
26. **SURVIVAL.** Rights and obligations in paragraphs 1, 6, 11-15, 18-22 and 29 survive the termination or expiration of this Agreement.
27. **EXPORT.** Customer acknowledges that the Services and Software provided by Creditor Name are subject to U.S. and when applicable non US export regulations. Customer shall comply with applicable export and import laws and regulations for the jurisdiction in which the Services will be imported, exported and/or provided. Customer shall not export the Services or Software to any individual, entity or country prohibited by applicable law or regulation. Customer is responsible, at Customer’s own expense, for any local government permits, licenses or approvals required for importing and/or exporting the Services and/or Software provided by Creditor Name. Customer agrees to notify Creditor Name if any customer data is or has been specifically designed, developed, configured, adapted, or modified for a military application listed on the United States Munitions List or USML, which would subject the service to the International Traffic in Arms Regulations (ITAR), Title 22 Code of Federal Regulations (CFR) Parts 120-130. For additional information regarding exporting and importing **Creditor Name** Software, see **Creditor website address.**  **Creditor Name** reserves the right to update this website from time to time at its sole discretion.
28. **NOTICE TO U.S. GOVERNMENT END USERS:** The Software or Services are deemed to be "commercial computer software" and "commercial computer software documentation," pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Software or Services by the United States Government shall be governed solely by the terms of this Agreement.
29. **FORCE MAJEURE.** Creditor Name is not liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused by forces of nature or any other cause beyond its reasonable control.
30. **ENTIRE AGREEMENT AND SEVERABILITY.** This Agreement represents the entire agreement between the parties and expressly supersedes and cancels any other communication, representation or advertising whether oral or written, on the subjects herein. This Agreement supersedes and controls over any conflicting terms contained in any Customer purchase order. If any provision of this Agreement is declared invalid or unenforceable by a court or administrative agency of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and this Agreement shall be construed and performed as if it did not contain the invalid or unenforceable provision.
31. **RELATIONSHIP.** The parties to this Agreement are independent contractors. Neither party will be deemed to be or hold itself out as a partner, joint venturer or agent of the other party. This is a non-exclusive arrangement.
32. **SUPPLEMENTAL TERMS.** In the event of a conflict between the Supplemental Terms and the Subscription Agreement, the Supplemental Terms shall control, but solely as to the relevant Service.
33. **THIRD PARTIES.** No term of this Agreement shall be enforceable by a person who is not a party to the Agreement.

**SUPPLEMENTAL TERMS AND CONDITIONS**

**A. Creditor Name SaaS Email Protection Supplemental Terms**

The following terms and conditions (“Supplemental Terms”) apply to all Customers using the **Creditor Name** SaaS Email Protection Service (for purposes of these Supplemental Terms, the “Service”), and are incorporated into the Agreement:

1. DEFINITIONS. Defined terms used in these Supplemental Terms shall have the meanings set forth in the Subscription Agreement or the meanings given below.
   1. "Bulk Email" means a group of more than one hundred (100) Emails with substantially similar content.
2. ADDITIONAL CUSTOMER OBLIGATIONS. Customer's Email systems must be directly and permanently connected to the Internet with a fixed IP address. Customer agrees not to: (i) transmit through the Services any Junk Email, Malware or Bulk Email; (ii) transmit obscene or pornographic material; (iii) send email that makes use of or contains invalid or forged headers, invalid or non-existent domain names or other means of deceptive addressing; (iv) send email with attachments over 100MB (each of which shall be included in the definition of "Prohibited Use").
3. REFUSING CUSTOMER CONNECTIONS. **Creditor Name** SaaS Email Protection will reject connections from senders who are unable to accept at least 90% of the bounce-return messages (mailer-daemon failure/error messages) destined for their systems. Complaints and/or blacklists from sources deemed reasonable by Creditor Name will be used as a basis for refusing connections from any mail server.

**B. Creditor Name Email Archiving Service Supplemental Terms**

The following terms and conditions (“Supplemental Terms”) relate to the **Creditor Name** SaaS Email Archiving Service (for purposes of these Supplemental Terms, the “Service”) and are incorporated into the Subscription Agreement:

1. DEFINITIONS. Defined terms used in these Supplemental Terms have the meanings set forth in the Standard Terms or the meanings given below.
   1. "Archived Data" means any electronically stored information provided to **Creditor Name** by Customer to be stored in the Service, including Journaled Data and Historical Data that have been stored on Creditor Name systems.
   2. "Journaled Data" means email messages created after the start date of the Service that are automatically generated by Customer's email server(s) journal function to a journal mailbox for archiving.
   3. "Historical Data" means: Email created prior to the start date of the Service; or Email created by non-licensed users of the Service, regardless of date created.
2. UNLIMITED STORAGE. An unlimited amount of Journaled Data may be stored using the Service, subject to the following limitations and restrictions:
   1. Historical Data may not be archived as Journaled Data but may be stored subject to separate hosting fees and storage limits (see 6. Historical Data Import below).
   2. Customer cannot insert Historical Data into a journal mailbox for archiving to avoid paying Historical Data hosting fees or for any other reasons.
   3. Customer cannot insert Email that were not generated by Customer's server journaling function into the journal mailbox for archiving.
   4. If the amount of data storage space used by Customer exceeds 150% of the average amount of storage space used by customers of the Service, Customer may be charged additional data hosting fees on a monthly basis for the excess storage space used.
   5. Archived email message(s) may not exceed 50MB in size.
3. RETENTION PERIOD CHANGES. During the Term, the per-user monthly rate for the Service may change in the event the retention period is extended beyond the period stated in the Grant Letter (“Adjusted Rate”). The Adjusted Rate will apply retroactively to the date Services commenced. Customer agrees to pay any back fees owed under the Adjusted Rate within sixty (60) days of invoice. A change in retention period will apply to all current and future archived email messages.
4. CUSTOMER ADMINISTRATOR ROLE PRIVILEGE. Customer may designate Users as "Customer Administrators" who may have access to all archived Email messages, report data, and Service configuration.
5. SELECTIVE PURGE. Customer understands that any User of the Services permitted to use the Selective Purge feature of the Service can permanently and irreversibly remove archived email messages. CUSTOMER ACCEPTS ALL RESPONSIBILITY FOR, AND RELEASES **CREDITOR NAME** FROM ANY LIABILITY FOR, ANY SUCH USE OF THE SELECTIVE PURGE FEATURE AND REMOVAL OF ARCHIVED EMAILS.
6. HISTORICAL DATA IMPORT. If the amount of Historical Data to be imported by **Creditor Name** exceeds the amount specified in the Services Order Form or other purchasing documentation, **Creditor Name** is not required to import the Historical Data until the purchasing documentation is reissued to reflect the accurate amount. Customer is responsible for maintaining a duplicate copy of all Historical Data until Customer verifies the completion of the import. If Customer uses the **Creditor Name** Managed Import Service for importing Historical Data, Customer agrees to provide all Historical Data to **Creditor Name** in PST or EML format. Corrupt, password protected, unreadable PST or EML files, and unreadable or incompatible email messages will not be imported. **Creditor Name** is not responsible for the storage or maintenance of data that is not properly imported. All price quotes and charges may be based on aggregate pre-import file sizes.
7. DATA ACCESSIBILITY. Customer may access Archived Data as follows:
   1. Customer may, during the Term and at its own cost, download Archived Data via the Service control console (“Control Console”) website; or
   2. Upon written request and payment of **Creditor Name**'s then-current professional service rates plus the cost of media shipping and handling, **Creditor Name** will download all or part of the Archived Data to portable media. Requests for the export of Archived Data must be received by **Creditor Name** at least thirty (30) days prior to the expiration of the Term.
8. CUSTOMER AND ARCHIVED DATA RESIDENCY. Customer acknowledges that **Creditor Name** cannot control the Internet routes used to transmit Customer Data to the Service. **Creditor Name** may store Customer Data and Archived Data in any of its data centers, including those outside the Customer’s country. Customer acknowledges that configuration data, metadata, reporting data, and any data exposed or routed to Customer via the Control Console web portal will route through data centers in the United States of America.
9. EXPIRATION. An Email’s expiration date is determined by adding the retention length selected by Customer in the Agreement to the Email’s archive date. Upon expiration, the Service will automatically and permanently remove expired Email from the archive within thirty (30) days of expiration subject to the following exceptions:
   1. Historical Data does not expire.
   2. Emails placed on a legal hold by Customer do not expire until Customer removes the legal hold.
   3. Email purged by Customer prior to scheduled expiration.
10. TERMINATION. Upon expiration, termination or cancellation of the Agreement for any reason, Creditor Name has no obligation to retain any Archived Data, including Email on legal hold, and may permanently delete all Archived Data from the archive. CUSTOMER RELEASES **CREDITOR NAME** FROM ANY LIABILITY FOR DELETING CUSTOMER DATA UPON EXPIRATION, TERMINATION OR CANCELLATION OF THE AGREEMENT.
11. ANTI-SPAM AND ANTI-VIRUS REQUIREMENT. Customer agrees to use an effective anti-spam/anti-virus solution at its own cost in order to minimize occurrences where unsolicited or harmful Email is archived.
12. CUSTOMER OBLIGATIONS. Customer agrees to obtain the necessary consent of its employees and/or any third party to archive Email messages to or from them. It is Customer's responsibility to select the retention period required to meet any legal or compliance obligations.
13. ELECTRONIC STORAGE SERVICE FOR CUSTOMERS SUBJECT TO U.S. SECURITIES AND EXCHANGE COMMISSION ("SEC") REGULATIONS ON ARCHIVING OF ELECTRONIC MAIL MESSAGES. Customer must disclose to **Creditor Name** in advance if Customer intends to designate **Creditor Name** as its electronic storage service provider for compliance with SEC regulations. A separate agreement is required for **Creditor Name** to accept this designation.
14. DATA OWNERSHIP AND ACCESS. Customer agrees that **Creditor Name** may access Archived Data in response to any technical problems and to ensure proper working of the Services.