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Appgate Master Agreement

This Appgate Master Agreement (this "MA") sets forth terms that apply as between the reseller ("Reseller") that is reselling Appgate Cybersecurity, Inc. (and, together with its Affiliates, "Appgate") Products and/or Services to you ("End User") and End User with respect to such Products and/or Services and is effective (the "Effective Date") as of the effective date of the order entered into between End User and Reseller for such Products and/or Services. This MA provides the general terms and conditions applicable to End User's purchase of Appgate products and services ("Products" or "Services") from Reseller, which Products and/or Services will also be governed by the applicable schedule or service schedule(s) (each, a "Schedule" or "Service Schedule").

1. **Services; Service Schedules.** The applicable Schedule(s) shall set forth the terms and conditions relevant to the Products and Services covered thereby.

2. **Term; Termination.**

a. Term of this MA. The term of this MA will commence on the Effective Date and continue until terminated in accordance with the terms hereof.

b. Termination Upon Expiration or Termination of all Services. The Agreement will automatically terminate following expiration or termination of the last effective Product/Service being provided or to be provided under a Schedule.

c. Termination for Cause. An "Event of Default" shall be deemed to occur if either party materially breaches the Agreement and fails to cure such breach within thirty (30) days after the defaulting party's receipt of written notice from the non-defaulting party, provided, that, if such breach cannot reasonably be cured within such timeframe, an "Event of Default" shall not be deemed to have occurred so long as the defaulting party (a) commences curing such breach within the required timeframe and (b) uses commercially reasonable efforts to cure such breach as promptly as possible thereafter. If an "Event of Default" has occurred and is continuing, the non-defaulting party may terminate the Agreement (and all Services being provided under the Agreement) by providing written notice to the defaulting party setting forth: (i) the specific facts and circumstances of the Event of Default and (ii) the effective date of the termination (which shall be no later than thirty (30) days after the date the non-defaulting party sends such notice to the defaulting party).

3. **Confidentiality**. Except as set forth in the Agreement, neither receiving party will, without the prior written consent of the disclosing party, disclose or use the Confidential Information of the disclosing party. For the avoidance of doubt, with respect to End User's obligations under this Section 3, Confidential Information of Reseller includes Appgate Confidential Information. Each receiving party will protect the disclosing party's Confidential Information using at least the same efforts the receiving party uses to protect its own confidential information of a similar nature, but in no event less than commercially reasonable efforts. Each receiving party agrees to limit disclosure and access to the disclosing party's Confidential Information to those of its officers, employees, contractors, attorneys or other representatives who (a) reasonably require such access in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement, (b) are made aware of the Confidential Information's confidential nature and (c) are subject to confidentiality and non-use obligations at least as restrictive as those set forth herein. Each receiving party agrees not to use the disclosing party's Confidential Information for any purpose other than in connection with the consummation of the transactions contemplated under the Agreement or prosecuting or defending any claim arising under or with respect to the Agreement. Nothing in the Agreement shall be deemed or construed to grant to the receiving party a license to sell, develop, exploit or create derivatives of the disclosing party's Confidential Information. A receiving party may disclose the disclosing party's Confidential Information to the extent required to do so by applicable law, provided, that, (i) to the extent legally permissible, the receiving party notifies the disclosing party prior to making any such disclosure so as to enable the disclosing party to seek such protection as may be available to preserve the confidentiality of such Confidential Information and (ii) the receiving party discloses only such information as its counsel advises is legally required to be disclosed. Notwithstanding the obligations in this Section 3, neither receiving party's obligations under this Section 3 shall apply to information that (1) is at the time of disclosure by the disclosing party to the receiving party in the public domain or, at any time thereafter enters the public domain through no breach of this Section 3 by the receiving party, (2) is already known to the receiving party at the time of its disclosure by the disclosing party to the receiving party, (3) is independently developed by the receiving party without use of or reference to Confidential Information of the disclosing party, or (4) is received by the receiving party from a third party who is not known to the receiving party to be subject to any restriction on disclosure. Promptly following receipt of the disclosing party's written request, the receiving party shall return to the disclosing party or destroy (at the receiving party's option) all of the disclosing party's Confidential Information. Notwithstanding the foregoing, the receiving party shall have no obligation to return or destroy any of the disclosing party's Confidential Information retained in standard archival or computer back-up systems or pursuant to the receiving party's normal document or email retention practices, provided, that, the receiving party's obligations under this Section 3 with respect thereto shall survive for two (2) years following the date such Confidential Information is no longer retained pursuant to this sentence (but no less than two (2) years following expiration or termination of the Agreement). Each party's obligations under this Section 3 shall survive for two (2) years following expiration or termination of the Agreement, provided, that, to the extent any of the disclosing party's Confidential Information constitutes a trade secret, the receiving party's obligations under this Section 3 with respect thereto shall survive until such Confidential Information ceases to so constitute a trade secret (but no less than two (2) years following expiration or termination of the Agreement). Each receiving party acknowledges that a threatened or actual breach by it of this Section 3 may result in immediate, irreparable harm to the disclosing party for which monetary damages may not be adequate compensation and, consequently, that the disclosing party shall be entitled, in addition to all other remedies available to it at law or equity, to seek (without any requirement to post bond) injunctive or other equitable relief to prevent such threatened or actual breach. The receiving party will be responsible for any violation of the terms of this Section 3 committed by its officers, employees, contractors, attorneys or other representatives.

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4. **DISCLAIMER OF WARRANTIES**. EXCEPT AS SET FORTH IN THE APPLICABLE SERVICE SCHEDULE OR ADDENDUM, (A) ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND END USER'S USE OF THE PRODUCTS AND SERVICES IS SOLELY AT ITS OWN RISK, (B) APPGATE AND RESELLER DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, COMPLETENESS, COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM, (C) APPGATE AND RESELLER MAKE NO WARRANTIES OR REPRESENTATIONS THAT ANY PRODUCT OR SERVICE WILL BE COMPLETELY SECURE, FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF END USER, AND (D) NEITHER APPGATE NOR RESELLER WARRANTS THAT THE PRODUCTS OR SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED.

5. **LIMITATION OF LIABILITY.** EXCEPT AS SET FORTH IN THE APPLICABLE SCHEDULE OR ADDENDUM, APPGATE, RESELLER AND END USER SHALL NOT BE LIABLE UNDER THE AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ANY LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, COST OF REPLACEMENT SERVICES, LOSS OF PROFITS OR REVENUE, LOSS OF OR CORRUPTION OF DATA OR DATA USE, OR COMPUTER FAILURE, DELAY OR MALFUNCTION, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER APPGATE, RESELLER OR END USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY (THE "INDIRECT/CONSEQUENTIAL DAMAGES WAIVER"). EXCEPT AS SET FORTH IN THE APPLICABLE SCHEDULE OR ADDENDUM, APPGATE'S, RESELLER'S AND END USER'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY END USER AND ITS AFFILIATES TO RESELLER AND ITS AFFILIATES UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DAY THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION HEREUNDER OCCURRED (THE "DAMAGE CAP"). NOTWITHSTANDING THE FOREGOING, IF THE FIRST EVENT GIVING RISE TO A CLAIM OR CAUSE OF ACTION OCCURS IN THE FIRST TWELVE (12) MONTHS OF THE TERM OF THIS MA, THE DAMAGE CAP WILL BE THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY END USER AND ITS AFFILIATES TO RESELLER AND ITS AFFILIATES FOR THE FIRST TWELVE (12) MONTHS OF THE TERM OF THIS MA. FOR THE AVOIDANCE OF DOUBT, PURSUANT TO SECTION 7.k, IN NO EVENT SHALL APPGATE HAVE ANY LIABILITY DIRECTLY TO END USER OR ANY OF ITS AFFILIATES FOR ANY CLAIMS OR CAUSES OF ACTION ARISING FROM OR RELATED TO THE AGREEMENT. NOTHING IN THIS SECTION 5 SHALL BE DEEMED TO LIMIT END USER'S LIABILITY FOR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, CLAIMS OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OR END USER'S INFRINGEMENT OR MISAPPROPRIATION OF APPGATE'S AND/OR RESELLER'S INTELLECTUAL PROPERTY RIGHTS.

6. **Intellectual Property**. Except as set forth in the applicable Service Schedule or Addendum, nothing in the Agreement or the performance thereof shall convey, license or otherwise transfer any right, title or interest (express, implied or otherwise) in any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other form of intellectual property of (1) a party, its Affiliates or their respective licensors to the other party and/or (2) Appgate, its Affiliates or its respective licensors to End User. Except as set forth in the applicable Service Schedule or Addendum, Appgate's intellectual property and proprietary rights include any skills, know-how, modifications, other enhancements or derivative works developed or acquired by or on behalf of Appgate in the course of configuring, providing or managing the Service for Reseller for resale to End User. End User agrees that it will not, directly or indirectly, circumvent, reverse engineer, decompile, disassemble, reproduce, otherwise attempt to derive source code, trade secrets or other intellectual property, or modify or make derivative works from any information, material, technology, trademarks, copyrights, service marks, trade names, patents, trade secrets or other intellectual property of Appgate, its Affiliates or their respective licensors. End User agrees that it will not disclose or publish performance benchmark results or test results with respect to the Services.

7. **Miscellaneous**.

a. <u>Amendments</u>. Except as otherwise set forth in the Agreement, the Agreement may only be amended, modified, supplemented or revoked by an instrument in writing signed by both parties and consented to by Appgate. Appgate may modify this MA, any Schedule and/or any Addendum from time to time by posting an updated MA, Schedule or Addendum, as applicable, at the website this MA is currently posted at or a successor website.

b. <u>Waiver</u>. No waiver by any party of any of the provisions hereof shall be (i) effective unless explicitly set forth in writing and signed by the party so waiving (provided, that, any waiver by Reseller must also be consented to by Appgate to be effective) or (ii) construed as a waiver of the same provision at any time in the future or of any other provision. No failure to exercise or delay in exercising any right, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof.

c. <u>Headings</u>. The headings in the Agreement are for reference only and shall not affect the interpretation of the Agreement.

d. <u>Severability</u>. If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction and, in the jurisdiction in which such term or provision is invalid, illegal or unenforceable, such term or provision will be modified as nearly as possible to reflect the intentions of the parties so as to no longer be invalid, illegal or unenforceable in such jurisdiction.

e. <u>Governing Law</u>. All matters arising out of or relating to the Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, excluding principles of conflicts of laws, whether of the State of Florida or any other jurisdiction.

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f. <u>Venue</u>. Each of the parties agrees that all claims, demands, causes of action, actions, suits or proceedings arising out of, based upon or relating to the Agreement, the subject matter hereof or thereof or the transactions contemplated hereby or thereby ("Legal Proceedings") shall be brought and maintained exclusively in the Federal and state courts of Miami-Dade County, Florida. Each party agrees and submits to the exclusive venue and jurisdiction of such courts and unconditionally and irrevocably waives any objection based on lack of jurisdiction or inconvenient forum. Notwithstanding the foregoing, the provisions of this Section 7.f shall not restrict the ability of any party to enforce in any court any judgment obtained in a Federal or state court of Miami-Dade County, Florida. Notwithstanding anything in the Agreement to the contrary, each party shall have the right to commence and prosecute any action for injunctive or other equitable relief before any court of competent jurisdiction.

g. <u>WAIVER OF JURY TRIAL</u>. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE.

h. <u>Expenses; Attorneys' Fees</u>. In the event that any party institutes any Legal Proceeding against the other party, the prevailing party in the Legal Proceeding shall be entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the reasonable costs and expenses (including, without limitation, those incident to appellate, bankruptcy and post-judgment proceedings) incurred by the prevailing party in conducting the Legal Proceeding, including reasonable attorneys' fees and expenses and court costs.

i. <u>Survival</u>. Notwithstanding anything contained in the Agreement to the contrary, the terms of any sections of the Agreement which by their nature are intended to extend beyond expiration or termination of (i) this MA, (ii) any Schedule or Addendum or (iii) any other document governed by, or that is incorporated by reference into, this MA, a Schedule or an Addendum, will survive expiration or termination of this MA, such Schedule, such Addendum or such other document, as applicable.

j. <u>Force Majeure</u>. The obligations of a party to perform under the Agreement (other than obligations to pay any sum due under the Agreement) may be temporarily suspended during any period during which such party is unable to carry out its obligations under the Agreement, when and to the extent such failure or delay is caused by or results from acts beyond such party's reasonable control (a "Force Majeure Event"), and such party shall not have any liability or responsibility to the other party or be deemed to have defaulted under or breached the Agreement for failure or delay in performance to the extent resulting therefrom.

k. <u>Third-party Beneficiaries</u>. For avoidance of doubt, subject to Appgate's rights as a third-party beneficiary set forth in this Section 7.k, nothing herein shall establish privity of contract between Appgate and the End User. Appgate shall not be deemed an employee, agent or contractor of End User. Nothing in the Agreement shall be construed to create a joint venture, partnership, association or other form of legal entity or business enterprise between Appgate and End User. End User shall not have any express or implied right or authority to assume or create any obligations on behalf of or in the name of Appgate or to bind Appgate to any contract, agreement or undertaking. Appgate is an intended third-party beneficiary of this Agreement and has the express right to enforce the Agreement directly against the End User. Appgate disclaims all liability and responsibility to End User arising from or related to the Agreement. End User waives any and all claims for damages, losses or liability against Appgate arising from or related to the Agreement. In no event shall any other agreement and/or terms between End User and Reseller or any other agreement and/or terms be deemed to expand, limit or modify Appgate's obligations set forth in the Agreement. Except as set forth above in this Section, no person or entity, other than the parties and their respective successors and permitted assigns, shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, the Agreement.

l. <u>Assignment; Successors and Assigns</u>. The Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither the Agreement nor any rights or obligations under the Agreement may be transferred, assigned or delegated, in whole or in part, by End User, without Appgate's prior written consent, and any attempted transfer, assignment or delegation without such consent shall be null and void.

m. <u>Notices</u>. All notices in connection with the Agreement shall be in writing and shall be deemed to have been given: (i) when delivered, if delivered by hand, (ii) on the next business day after the date sent, if sent (for overnight delivery) by nationally recognized overnight courier, (iii) upon the earlier to occur of receipt by the addressee as evidenced by return receipt thereof or five (5) days from the date of mailing, when sent by first class mail, prepaid postage, return receipt requested, or (iv) on the date the transmission was sent if sent during normal business hours of the recipient or on the next business day if sent after normal business hours of the recipient, if sent by facsimile or e-mail. In the event End User sends Reseller a notice in connection with the Agreement, End User shall send a copy of such notice to Appgate at legal@appgate.com (or such other notice address as may be updated by Appgate from time to time).

n. <u>Use of Name and Marks</u>. Appgate may reference End User's status as an end user of Appgate in marketing materials, sales presentations on Appgate's website and for other valid business purposes. Appgate may use End User's tradenames, trademarks and domain names in connection with the foregoing. End User may not take any of the foregoing actions or issue a press release referencing Appgate, directly or indirectly, without Appgate's prior written consent.

8. **Definitions**.

a. "Affiliate" means any entity controlled by, controlling, or under common control with a party, where the term "control" and its correlative terms, "controlling", "controlled by" and "under common control with", means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in an entity.

b. "Agreement" means (i) this MA and (ii) all Schedules and Addendums.

c. "Confidential Information" means all information (including, for the avoidance of doubt, information about the disclosing party's Affiliates) that is disclosed by or on behalf of the disclosing party to the

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receiving party, during the term of the Agreement, whether written, oral, visual or otherwise that (i) is identified as confidential using an appropriate legend, marking, stamp, or other clear and conspicuous written identification that unambiguously indicates the information being provided is Confidential Information (or, in the case of information provided in other than written form, is identified as confidential at the time it is first disclosed, with such identification to be confirmed in writing by the disclosing party to the receiving party promptly following disclosure) or (ii) should reasonably be understood to be confidential or proprietary based on the content of the information and/or the circumstances of its disclosure.