AppGate Master Agreement

This AppGate Master Agreement (this "MA") is entered into by and between Cyxtera Cybersecurity, Inc. d/b/a AppGate, a Delaware corporation ("AppGate"), and Customer, and is effective on the Effective Date for this MA. This MA provides the general terms and conditions applicable to Customer's purchase of products and services ("Products" or "Services") under a schedule(s) or service schedule(s) at https://www.appgate.com/legal/product-and-service-terms-and-conditions (each, a "Schedule" or "Service Schedule"). This MA is part of an online contract (defined herein as the Agreement) comprised of this MA, one or more Schedules and/or Order Forms (as defined in the applicable Schedule), and such other documents listed herein as comprising the Agreement. The components of the Agreement will work together as described in the table at https://www.appgate.com/legal/product-and-service-terms-and-conditions, as such table may be modified from time to time to reflect additional or modified Products or Services.

1. **Services; Service Schedules.** AppGate, or an Affiliate thereof, may enter into one or more Service Schedules with Customer, or an Affiliate thereof, which shall set forth the terms and conditions relevant to, and the process for ordering, 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 Service being provided or to be provided under a Schedule.

c. Termination for Cause. An "Event of Default" shall be deemed to occur if (i) Customer fails to make any payment when due under the Agreement and such failure continues for ten (10) days after Customer's receipt of written notice from AppGate, (ii) either party materially breaches the Agreement and fails to cure such breach within thirty (30) days (unless a different period is set forth in the Agreement) 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, or (iii) a party (1) becomes insolvent, (2) becomes subject to any voluntary or involuntary bankruptcy, liquidation, insolvency or similar proceedings (which, with respect to any involuntary bankruptcy, liquidation, insolvency or similar proceeding, is not dismissed within sixty (60) days of the date filed), (3) makes an assignment for the benefit of creditors, (4) appoints or consents or acquiesces to the appointment, of a receiver, liquidator, assignee, trustee or similar person or entity for all or any substantial part of its assets, or (5) admits in writing its inability to pay its debts as they become due. 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). In the event Customer terminates a Service pursuant to this Section 2.c, (x) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (y) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Service relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis. In addition to the right of termination set forth in this Section 2.c, the terminating party shall be entitled to any and all rights and remedies available under the Agreement and at law or in equity.

3. **Payment.** AppGate may begin invoicing for specific Services as specified in the applicable Service Schedule. Unless otherwise indicated, all charges are quoted and payable only in United States dollars. For convenience, a single AppGate entity may invoice Customer for Services provided by another AppGate Affiliate. Invoiced amounts are due in full within thirty (30) days of the date of delivery of the invoice to Customer (the "Due Date"). To dispute a charge on an invoice, Customer must submit a written notice to AppGate on or prior to the Due Date for such invoice identifying the specific charge(s) in dispute and providing reasonable supporting documentation. Customer may withhold payment of any amount disputed in good faith in accordance with this Section 3, but shall remain obligated to make timely payment of all other charges ("Undisputed Charges") by the Due Date. In the event Customer disputes an amount in accordance with this Section 3, the parties will work in good faith to resolve the dispute as expeditiously as possible. If the parties mutually determine that a disputed charge is in error, AppGate will reverse the amount incorrectly billed or, if Customer has already paid such disputed charge to AppGate, issue a credit to Customer for such amount. If the parties mutually determine that a disputed charge was billed correctly ("Resolved Charge"), Customer will be required to pay the Resolved Charge in full no later than ten (10) days after such mutual determination (the "Resolved Charge Due Date"). Any amount not disputed by Customer by the Due Date shall be deemed correct and binding upon Customer; Customer unconditionally and irrevocably waives any right to dispute any billed amount after the applicable Due Date. Any Undisputed Charge not paid by the Due Date or Resolved Charge not paid by the Resolved Charge Due Date is subject to late interest at the lesser of 1.5% per month or the maximum rate allowed by law. In the event Customer does not pay an Undisputed Charge by the Due Date or Resolved Charge by the Resolved Charge Due Date, Customer shall be liable for the payment of all fees and expenses, including reasonable attorneys' fees, incurred by AppGate in collecting, or attempting to collect, any such amount. Customer's payments to AppGate must be made by wire transfer, ACH, check or any other AppGate approved payment method. AppGate's acceptance of late or partial payments (even those marked, "paid in full") and late payment charges is not a waiver of its right to collect the full amount due.

4. **Taxes.** All fees stated are exclusive of Tax. Customer is responsible for all taxes, duties, fees and other governmental charges of any kind (other than taxes based on the net income of AppGate) imposed by any governmental entity on the provision, sale or use of the Services or required by any governmental entity to be assessed on Customer in connection therewith (collectively, "Taxes"). All payments due to AppGate shall be made without any deduction or withholding on account of any Tax, duty, charge or penalty, except as required by

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applicable law, in which case the sum payable by Customer in respect of which such deduction or withholding is to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, AppGate receives and retains (free from any liability in respect thereof, other than with respect to taxes based on the net income of AppGate) a net sum equal to the sum it would have received but for such deduction or withholding being required. Customer may present AppGate with a valid Tax exemption certificate; AppGate will give effect thereto prospectively for as long as such Tax exemption certificate remains valid.

5.   **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.   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 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 5, neither receiving party's obligations under this Section 5 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 5 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 5 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 5 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 5 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 5 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 5 committed by its officers, employees, contractors, attorneys or other representatives.

6.   **Use of Name and Marks**. Each party may reference the other party's status as a customer or vendor, as applicable, of the referencing party in marketing materials, sales presentations, on such referencing party's website and for other valid business purposes. Each party may use the other party's tradenames, trademarks and domain names in connection with the foregoing, provided, that, any use thereof by Customer shall be in accordance with AppGate's tradename/trademark usage policy, a copy of which is available to Customer upon request. Neither party may issue a press release referencing the other party, directly or indirectly, without such other party's prior written consent.

7.   **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 CUSTOMER'S USE OF THE PRODUCTS AND SERVICES IS SOLELY AT ITS OWN RISK, (B) APPGATE DISCLAIMS 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, COMPATABILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM, (C) APPGATE MAKES 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 CUSTOMER, AND (D) APPGATE DOES NOT WARRANT 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.

8.   **LIMITATION OF LIABILITY.** NOTHING IN THIS SECTION 8 SHALL BE DEEMED TO LIMIT LIABILITY FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER WITH RESPECT TO CONFIDENTIAL INFORMATION (WHICH, FOR THE AVOIDANCE OF DOUBT, EXCLUDES CUSTOMER DATA), A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, APPGATE'S OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES IN SECTION 9, CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF APPGATE'S INTELLECTUAL PROPERTY RIGHTS OR CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE

AGREEMENT. EXCEPT AS SET FORTH IN THE APPLICABLE SERVICE SCHEDULE OR ADDENDUM, NEITHER PARTY, NOR ITS AFFILIATES, SHALL 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 A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY (THE "INDIRECT/CONSEQUENTIAL DAMAGES WAIVER"). EXCEPT AS SET FORTH IN THE APPLICABLE SERVICE SCHEDULE OR ADDENDUM, EACH PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THE AGREEMENT WILL NOT EXCEED THE TOTAL FEES AND CHARGES PAID OR PAYABLE BY CUSTOMER AND ITS AFFILIATES TO APPGATE 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 CUSTOMER AND ITS AFFILIATES TO APPGATE AND ITS AFFILIATES FOR THE FIRST TWELVE (12) MONTHS OF THE TERM OF THIS MA.

9.   **Indemnification**.

a.   <u>AppGate Indemnification</u>. AppGate will defend, indemnify and hold harmless Customer, its Affiliates and each of their respective agents, officers, directors, representatives and employees from and against all third-party claims, demands, liabilities, losses, costs and expenses, including reasonable attorneys' fees (each, a "Claim"), to the extent alleging that Customer's use of a Product (other than Hardware) infringes or misappropriates such third-party's intellectual property rights. In the event any Product (other than Hardware) becomes the subject of a Claim (or AppGate believes such claim appears possible) under this Section 9, AppGate may, at its sole discretion: (i) contest the Claim, (ii) obtain permission from the third-party claimant for Customer's continued use of such Product, (iii) replace or modify such Product to make it non-infringing, or (iv) if the foregoing subclauses (i) through (iii) are not commercially reasonable, then terminate Customer's use of such Product. In the event of termination of a Product in accordance with this Section 9, (x) Customer will not be liable for any "Early Termination Charge" in connection with such termination and (y) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Product and relating to periods of time following such termination. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis. Notwithstanding anything in this Section 9 to the contrary, AppGate shall have no obligation or liability to Customer under this Section 9 to the extent the Claim arises from (1) any use of the Product other than in accordance with the Documentation and the Agreement, (2) a modification to the Product made or caused by Customer or any other party acting on behalf of Customer, (3) any customer data (including, for the avoidance of doubt, Customer Confidential Information and Customer Data), (4) use of the Product in violation of applicable law, (5) use of the Product after termination of the term with respect thereto, (6) use of the Product in combination with any hardware, software,

application, equipment, technology or material that was not provided by AppGate, (7) Customer's or any Authorized User's failure to use any new or corrected version of the Product made available by AppGate to Customer, (8) Customer's or any Authorized User's use of the Product after AppGate has notified Customer of the potential infringement or misappropriation, or (9) Customer's or any Authorized User's negligence or willful misconduct. This Section 9 states AppGate's sole obligation, and Customer's sole and exclusive remedy, for any Claim that a Product infringes or misappropriates the intellectual property rights of a third party.

b.   <u>Indemnification Process</u>. AppGate's obligations under this Section 9 are contingent upon the indemnified party (i) providing prompt written notice to AppGate of such Claim (provided, however, that any failure or delay in notice shall not affect any of the indemnified party's rights hereunder except to the extent AppGate is materially prejudiced thereby), (ii) allowing AppGate to control the defense and any related settlement of any such Claim, and (iii) furnishing AppGate with reasonable assistance, at AppGate's sole cost and expense, in the defense or settlement of any such Claim. The indemnified party shall have the right to participate in the defense of such Claim with counsel of its own choosing at its own expense. AppGate shall not enter into any settlement of any such Claim without the prior written consent of the indemnified party (such consent not to be unreasonably withheld, conditioned or delayed) if the indemnified party's rights would be directly and materially impaired thereby. For the avoidance of doubt, any settlement that does not include a full and unconditional release of the indemnified party from any and all liability arising out of the Claim, shall be deemed to directly and materially impair the indemnified party's rights.

10.   **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 a party, its Affiliates or their respective licensors to the other party. 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. Customer 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. Customer agrees that it will not disclose or publish performance benchmark results or test results with respect to the Services.

11.   **Miscellaneous**.

a.   <u>Entire Agreement</u>. The Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous agreements, representations, warranties and understandings, verbal and/or written, with respect thereto. The terms of the Agreement shall supersede the terms in any purchase order or other response made by

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Customer and no terms included in any such purchase order or response shall apply to the Agreement or in any way be binding upon AppGate.

b. Amendments. 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. AppGate may modify this MA and/or any Schedule from time to time by posting an updated MA or Schedule, as applicable, at https://www.appgate.com/legal/product-and-service-terms-and-conditions or a successor website and providing at least thirty (30) days prior notice to Customer. In the event such notice does not specify the date such modification is effective as of, such modification shall be effective thirty (30) days after Customer's receipt of such notice. Notwithstanding the foregoing, if, at any time prior to the effective date of such modification, Customer sends written notice to AppGate rejecting such modification, such modification will be deemed to have never had any force or effect and this MA or Schedule, as applicable, will continue under the provisions in effect immediately prior to AppGate's making such modification.

c. Waiver. 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 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.

d. Headings. The headings in the Agreement are for reference only and shall not affect the interpretation of the Agreement.

e. Severability. 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.

f. Governing Law. 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. 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. Venue. 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 11.g 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.

h. WAIVER OF JURY TRIAL. 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.

i. Expenses; Attorneys' Fees. 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.

j. Counterparts; Delivery. Each document governed by, or that is incorporated by reference into, this MA or a Service Schedule, may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A signed copy of any such document delivered by facsimile or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of such document.

k. Survival. 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 Service Schedule or (iii) any other document governed by, or that is incorporated by reference into, this MA or a Service Schedule, will survive expiration or termination of this MA, such Service Schedule or such other document, as applicable.

l. Conflicts. If a conflict exists among provisions within the Agreement, unless otherwise expressly stated to the contrary, the following order of precedence will apply in descending order of control: (i) this MA, (ii) a Service Schedule, (iii) an Addendum, (iv) an SLA or Support Terms, (v) a Service Order, Statement of Work, Order Form or Quote and (vi) any other document governed by, or that is incorporated by reference into, this MA or any of the documents referenced in subclauses (ii) through (v) hereof.

m. Relationship of the Parties. AppGate is an independent contractor and shall not be deemed an employee or agent of Customer. Nothing in the Agreement shall be construed to create a joint venture, partnership, association or other form of legal entity or business enterprise between the parties hereto. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement or undertaking.

n. Force Majeure. 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

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extent resulting therefrom. In the event AppGate is unable to deliver a Service as a result of a Force Majeure Event, Customer shall not be obligated to pay AppGate for the affected Service for so long as AppGate is unable to deliver such affected Service as a result of the Force Majeure Event. If a Force Majeure Event prevents the provision of a particular Service for a period of thirty (30) consecutive days, either party may terminate such Service by providing written notice to the other party, provided, that, the terminating party exercises its right to terminate before AppGate is able to resume providing such Service. In the event of termination of a Service in accordance with this Section 11.n, (i) Customer will not be liable for any "Early Termination Charge" with respect to such terminated Service and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Service relating to periods of time (A) following such termination and (B) for which Customer is not obligated to pay for the affected Service pursuant to this Section 11.n. With respect to a perpetual Software license, such refund shall be calculated, as depreciated, on a five (5) year straight line basis.

o.   Assignment; Successors and Assigns. The Agreement will be binding upon and inure to the benefit of the parties hereto 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 Customer, without AppGate's prior written consent, and any attempted transfer, assignment or delegation without such consent shall be null and void. Notwithstanding the foregoing, Customer may, after providing at least thirty (30) days' advance written notice to AppGate, assign the Agreement in its entirety to one of its Affiliates, provided, that, the assigning Customer shall remain liable under the Agreement.

p.   Notices. 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, (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, or (v) on the date the transmission was sent, if sent by AppGate to Customer through any customer portal made available by AppGate to Customer, any such notice to be sent to AppGate at 2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134, Attention: Legal Department, legal@AppGate.com or to Customer at Customer's address as set forth in AppGate's records. Either party may change its address for notices upon written notice to the other party in accordance with this Section 11.p.

q.   No Third-party Beneficiaries. Except as otherwise set forth in the Agreement, 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.

12.   **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, (ii) all Service Schedules, Addendums, Service Orders, Statements of Work, Order Forms, Quotes, Support Terms, and SLAs, and (iii) any other document governed by, or that is incorporated by reference into, this MA or any of the documents referred to in subclause (ii) hereof.

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 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.

d.   "Customer Data" means data, information, material or other content (but in all cases excluding AppGate's Confidential Information and intellectual property), in any form or medium, that is submitted, posted, uploaded, transmitted, processed or stored by or on behalf of Customer to, through or in, as the case may be, the Software, Hosted Services or SaaS Services.