# AppGate Master Agreement

This AppGate Master Agreement (this “MA”) is the standard Master Agreement used by Immunity Federal Services, LLC d/b/a AppGate Federal for the Products and Services covered hereunder which Carahsoft Technology Corp. has adopted for purposes of the resale of such Products and Services to the Ordering Activity issuing an order under the GSA Schedule contract (“Ordering Activity” or “Customer”). All references to Immunity Federal Services, LLC d/b/a AppGate Federal or AppGate herein (other than the references in the immediately following sentence) shall be deemed references to Carahsoft Technology Corp. For avoidance of doubt, nothing herein shall establish privity of contract between AppGate and the Ordering Activity. This MA is entered into by and between Immunity Federal Services, LLC d/b/a AppGate Federal (“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) (each, a “Schedule” or “Service Schedule”).

1. **Services; Service Schedules.** The Schedule incorporated into this Master Agreement as Exhibit A shall set forth the terms and conditions relevant to, and the process for ordering, the Products and Services covered thereby.

# Term; Termination.

* 1. 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.
  2. 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 Service Schedule.
  3. Termination for Cause. Recourse for any alleged breach of this Agreement must be brought as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Contract Disputes Clause, AppGate shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

# Reserved.

1. **Reserved**.
2. **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,](#_bookmark0) neither receiving party’s obligations under this Section [5](#_bookmark0) 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](#_bookmark0) 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](#_bookmark0) 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](#_bookmark0) 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](#_bookmark0) 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). The receiving party will be responsible for any violation of the terms of this Section [5](#_bookmark0) committed by its officers, employees, contractors, attorneys or other representatives. AppGate recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which, subject to applicable exemptions, requires that certain information be released, despite being characterized as “confidential” by the vendor.

1. **Use of Name and Marks**. Notwithstanding anything in this Section [6,](#_bookmark1) in the event Customer is a U.S. Federal Government Agency, the following shall only be permissible to the extent permitted by GSAR 552.203-71. 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 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.

1. **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.
2. NOTWITHSTANDING ANYTHING IN THE AGREEMENT, THE UNDERLYING GSA SCHEDULE CONTRACT OR ANY PURCHASE ORDER TO THE CONTRARY, ORDERING ACTIVITY’S INFRINGEMENT OR MISAPPROPRIATION OF APPGATE’S INTELLECTUAL PROPERTY RIGHTS SHALL NOT BE SUBJECT TO ANY LIMITATION OF LIABILITY IN THE AGREEMENT, THE UNDERLYING GSA SCHEDULE CONTRACT OR ANY PURCHASE ORDER.
3. **Third-Party IP Claims**. In the event any Product (other than Hardware) becomes the subject of a third-party claim alleging that Customer’s use of a Product (other than Hardware) infringes or misappropriates such third-party’s intellectual property rights (each, a “Claim”) (or AppGate believes such Claim appears possible) under this Section [9,](#_bookmark2) 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. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. In the event of termination of a Product in accordance with this Section [9,](#_bookmark2) (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](#_bookmark2) to the contrary, AppGate shall have no obligation or liability to Customer under this Section [9](#_bookmark2) 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.

1. **Intellectual Property**. All Products and Services provided under this Agreement are “commercial Items” as that term is defined at 48 C.F.R. § 2.101. All software products are classified as “Commercial Computer Software” and “Commercial Computer Software Documentation” developed at private expense, contain confidential information and trade secrets of AppGate and its licensors, and are subject to “Restricted Rights” as that term is defined in the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS). AppGate provides the Products and Services, including any related documentation, technical data, and/or professional services, in accordance with 48 C.F.R. §

12.211 (Technical Data) and FAR 12.212 (Computer Software), and only those rights in technical data and software customarily provided to the public as more fully set forth in the Agreement. In addition, 48 C.F.R. § 252.227‐7015 (Technical Data – Commercial Items) and 48 C.F.R. § 227.7202-3 (Rights in commercial computer software or commercial computer software documentation) apply to technical data and software acquired by Department of Defense agencies. Any U.S. Federal Government Agency shall obtain only those rights in technical data and software customarily provided to the public. If any U.S. Federal Government Agency has a need for rights not conveyed under the terms described in this Section [10,](#_bookmark3) it must negotiate with AppGate to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. The terms of this Section [10](#_bookmark3) regarding U.S. Federal Government Agency rights are in lieu of, and supersede, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data being provided under the Agreement. 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.

# Miscellaneous.

* 1. Entire Agreement. The Agreement together with the underlying GSA Schedule contract, Schedule pricelist and applicable purchase order(s) 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.
  2. 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 [this](https://www.appgate.com/legal/product-and-service-terms-and-conditions) website or a successor website.
  3. 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.
  4. Headings. The headings in the Agreement are for reference only and shall not affect the interpretation of the Agreement.
  5. 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.
  6. Governing Law. All matters arising out of or relating to the Agreement shall be governed by and construed in accordance with the Federal laws of the United States.
  7. Reserved.
  8. Reserved.
  9. Reserved.
  10. 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.
  11. Survival. 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.
  12. 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) a negotiated Service Order, Statement of Work, Order Form or Quote that is executed by AppGate and Ordering Activity, (ii) this MA,

(iii) a Service Schedule, (iv) an Addendum, (v) an SLA or Support Terms, and (vi) any other document governed by, or that is incorporated by reference into, this MA or any of the documents referenced in subclauses (i), (iii), (iv) or (v) hereof.

* 1. 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 with any third party.
  2. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).
  3. Assignment; Successors and Assigns. Assignments are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR

42.12 Novation and Change-of-Name Agreements (Sep. 2013).

* 1. Intentionally Omitted.
  2. 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.
  3. Indemnification Provisions. In the event Customer is a U.S. Federal Government Agency, any indemnification obligations in the Agreement imposed on Customer shall not apply to Customer to the extent Customer is prohibited from being bound by such indemnification obligations by applicable law.

# Definitions.

* 1. “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.
  2. “Agreement” means (i) this MA, (ii) all Service Schedules, Addendums, Service Orders, Statements of Work, Order Forms, Quotes, Support Terms, and SLAs, (iii) the underlying GSA schedule, and (iv) any other document governed by, or that is incorporated by

reference into, this MA or any of the documents referred to in subclauses (ii) or (iii) hereof.

* 1. “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.

* 1. “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.
  2. “U.S. Federal Government Agency” means any agency or department that is an instrumentality of the United States under the executive, legislative, or judicial branch of the United States government, or any independent instrumentality of the United States, such as the U.S. Securities and Exchange Commission or the U.S. Federal Communications Commission.

# Exhibit A

**AppGate Software Schedule**

This AppGate Software Schedule (this “Schedule”) is the standard Software Schedule used by Immunity Federal Services, LLC d/b/a AppGate Federal for the Products and Services covered hereunder which Carahsoft Technology Corp. has adopted for purposes of the resale of such Products and Services to the Ordering Activity issuing an order under the GSA Schedule contract (“Ordering Activity” or “Customer”). All references to Immunity Federal Services, LLC d/b/a AppGate Federal or AppGate herein (other than the references in the immediately following sentence) shall be deemed references to Carahsoft Technology Corp. For avoidance of doubt, nothing herein shall establish privity of contract between AppGate and the Ordering Activity. This Schedule is entered into by and between Immunity Federal Services, LLC d/b/a AppGate Federal (“AppGate”), and Customer, and is effective on the Effective Date for this Schedule. This Schedule is governed by that certain AppGate Master Agreement (the “MA”) entered into by and between Customer, or its Affiliate, and AppGate. In the event the MA is executed by an Affiliate of Customer, then the MA shall apply to this Schedule as if Customer was a party thereto in lieu of the Affiliate of Customer. Capitalized terms used, but not defined herein, shall have the meaning ascribed thereto in the MA.

# Products; Fees.

* 1. Products. This Schedule sets forth the terms generally applicable to all Software licensed hereunder, Professional Services and Hardware purchased hereunder and Support provided hereunder (whether included as part of another Product licensed or purchased hereunder or purchased separately hereunder) (collectively, the “Products”), as well as terms applicable only to specific Products as noted herein. AppGate’s Software-as-a-Service offerings are not covered under this Schedule and require a separate Schedule. Customer, or an Affiliate thereof, may license or purchase Products from AppGate pursuant to an Order Form or through the Portal.
  2. Fees. Customer will pay all applicable fees set forth in the relevant Order Form, any online licensing/purchasing website or portal made available by AppGate for Customer’s use in accordance with the GSA Schedule Pricelist (the “Portal”), or otherwise agreed to be paid by Customer to AppGate pursuant to the Schedule Agreement. Except as set forth in the applicable Order Form or on the Portal or otherwise in the Schedule Agreement, (i) Software license (non-perpetual) and Support fees will be billed annually, in advance; (ii) Software license (perpetual) fees will be billed in advance; (iii) varying or usage-based fees will be billed monthly in arrears; (iv) fees for hourly Professional Services engagements will be billed monthly in arrears; (v) fees for fixed-fee Professional Services engagements will be billed monthly in arrears, on a pro-rata basis based on the portion of Professional Services delivered to date; (vi) any expenses to which AppGate is entitled to reimbursement hereunder will be billed monthly in arrears; and (vii) fees for Hardware will be billed upon delivery.

# License Grant; Grant of Right to Access and Use; Reservation of Rights; Third-Party Components.

* 1. License Grant; Grant of Right to Access and Use. With respect to Software licensed by Customer, AppGate grants Customer a non-exclusive, non-transferable and non-sublicensable license to use

such Software during the Software Term with respect thereto, solely for use by Authorized Users in accordance with the Permitted Use. A license to use Software, also includes the non-exclusive, non- transferable and non-sublicensable right for Customer to use the Documentation applicable to such Software, solely in connection with Customer’s use of such Software.

* 1. Reservation of Rights. AppGate reserves all rights not expressly granted to Customer in the Schedule Agreement. Except for the limited rights and licenses expressly granted under the Schedule Agreement, nothing in the Schedule Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title or interest in or to the AppGate Intellectual Property. Notwithstanding anything in the Schedule Agreement to the contrary, Software is licensed in each case for the applicable term set forth herein, and in no event is Software sold, even if for convenience AppGate makes reference to words such as *sale* or *purchase* herein.
  2. Third-Party Components. The Products may contain or be provided with certain components subject to third-party or open source licenses. Attributions and terms relating to such components are available upon request from AppGate.

# Use; Restrictions on Use; Customer Responsibilities.

* 1. Use; Restrictions on Use. Customer shall not use the Software or Documentation, as applicable, for any purposes beyond the scope of license or access, as applicable, with respect thereto granted in the Schedule Agreement. Customer shall not (and shall not allow any Authorized User to), directly or indirectly, (i) copy, modify or create derivative works of the Software or Documentation, as applicable, in whole or in part, (ii) rent, lease, lend, resell, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Products (other than Hardware), (iii) except as expressly set forth on an Order Form, reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code or software component of the Software in whole or in part, (iv) remove any proprietary notices from the Software or Documentation, as applicable, or (v) use the Software or Documentation, as applicable, in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. AppGate may deploy the Software with license key or other technology that prohibits use of the Software, as applicable, beyond the applicable Software Term, license parameters, or grant of right to access and use.
  2. Customer Responsibilities. Customer is responsible and liable for all uses of the Software and Documentation, as applicable, resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of the Schedule Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of the Schedule Agreement if taken by Customer will be deemed a breach of the Schedule Agreement by Customer. Customer

shall make all Authorized Users aware of the Schedule Agreement’s provisions as applicable to such Authorized User’s use of the Software or Documentation, as applicable, and shall cause Authorized Users to comply with such provisions.

1. **Installation; Configuration; Instruction; Support**. Unless otherwise specified in an Order Form, AppGate has no responsibility for (a) assisting Customer in installing or configuring any of the Software, or (b) providing Customer instruction on use of any Software (except for any such instruction on use set forth in the Documentation with respect to such Software). Unless otherwise specified in an Order Form, Support is included for Software licenses (non-perpetual) in accordance with the applicable Support Terms with respect thereto. Unless otherwise specified in an Order Form, AppGate has no responsibility for providing Customer Support for a perpetual Software license.

# Professional Services.

* 1. Professional Services. AppGate will provide Customer with professional services (“Professional Services”) purchased on an Order Form or through the Portal.
  2. Reimbursement of Expenses. Customer is responsible for reimbursing AppGate for all pre-approved reasonable, documented, out-of-pocket expenses incurred by AppGate in performing the Professional Services. Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.
  3. Customer’s Obligations. Customer must: (i) provide AppGate personnel with such information, cooperation and support as may reasonably be required for AppGate to provide the Professional Services, (ii) subject to applicable government security requirements provided in advance to AppGate in writing, permit AppGate personnel to access such of Customer’s systems, networks, premises and property as is necessary to perform the Professional Services, and ensure that AppGate is granted sufficient consents, authorizations and licenses to access and use any third party systems, programs, or networks necessary to provide the Professional Services, (iii) ensure that all necessary consents, authorizations and licenses have been obtained so that AppGate’s provision of the Professional Services does not breach any statutory or regulatory provisions (of whatever jurisdiction) relating to the use of and access to personal data or otherwise breach any applicable law, and (iv) ensure the health and safety of AppGate personnel engaged in providing the Professional Services at Customer’s premises.
  4. Work Product. Each Order Form may specify “Work Product” to be provided by AppGate. Once AppGate has received full and final payment for “Work Product”, anything specified in an Order Form as “Work Product” will become the property of Customer at the moment such item is fixed in a tangible medium, all rights, title and interest therein will vest in Customer and AppGate shall permanently assign and transfer to Customer any and all of AppGate’s right, title and interest in the Work Product, provided, that, AppGate retains all right, title and interest in any AppGate Intellectual Property incorporated into Work Product. To the extent any AppGate

Intellectual Property is incorporated into Work Product, Customer is hereby granted a perpetual, worldwide, non-transferable, non- exclusive, royalty-free, fully paid-up license to use such AppGate Intellectual Property solely in conjunction with the Work Product.

# Term; Termination; Effect of Expiration or Termination.

* 1. Term of this Schedule. The term of this Schedule will commence on the Effective Date and continue until terminated in accordance with the terms hereof.
  2. Termination Upon Expiration or Termination of all Products. The Schedule Agreement will automatically terminate following expiration or termination of the last effective Product being provided or to be provided under this Schedule.
  3. Term of Order Forms and Products. Software licenses (non- perpetual) Support services have a minimum term which begins on the billing commencement date (“BCD”) and continues for the period set forth in the relevant Order Form or in the Portal. With respect to a Software license (non-perpetual), the term of such Software license is referred to as the “Software Term”. With respect to a Software license (perpetual), the “Software Term” is perpetual. With respect to a Support service, the term of such Support service is referred to as the “Support Term”. Except as expressly set forth herein, Order Forms are non-cancellable and amounts paid thereunder are non-refundable.
  4. Effect of Expiration or Termination. Upon expiration or earlier termination of a Product for any reason, the license or right to access and use, as applicable, such Product granted by AppGate to Customer will also terminate. Upon termination of the license or right to access and use, as applicable, Customer must immediately cease using the applicable Software and Documentation and, to the extent applicable, return, delete or destroy all copies thereof as well as all other AppGate Intellectual Property relating thereto (in each case, in whatever form). Upon AppGate’s request, Customer will certify in writing to AppGate that Customer has performed the foregoing obligation.

# Reserved.

1. **Billing Commencement Date (BCD) (Software (non- perpetual) and Support).** The BCD for a Software license (non- perpetual) or Support service, as applicable, is the earlier to occur of (a) the later to occur of (i) if applicable, the date specified in the Order Form as the date on which the Software Term or Support Term, as applicable, commences and (ii) the date the Software or Support service, as applicable, is made available to Customer for use and (b) the date that the Software or Support service, as applicable, is used by Customer. In the event an Order Form specifies a date range for the term of the Software license or Support service (e.g., January 15 of year 1 to January 14 of year 2), as applicable, as opposed to a set term (e.g., one (1) year), but the BCD for such Software license or Support service, as applicable, is a different date than the date specified in the Order Form as the date on which the term of the Software license or Support service, as applicable, commences (e.g., the BCD is January 5 of year 1 instead of January 15), the term of such Software license or Support service, as applicable, shall commence on the BCD for such Software license or Support service, as applicable, and continue for the period of time that the term of such Software license or Support

service, as applicable, was intended to be for (e.g., one (1) year commencing on January 5 of year 1 and ending on January 4 of year 2).

1. In the event Ordering Activity’s use of Software expands beyond the Permitted Use or number of permitted Authorized Users, Ordering Activity shall be charged for such expanded use at AppGate’s then-current list prices in accordance with the GSA Schedule Pricelist applicable to such expanded use and Ordering Activity shall promptly pay such amounts to AppGate. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

# Warranties.

* 1. Software Warranties. AppGate warrants to Customer that Software will function materially in accordance with the Documentation for a period of sixty (60) days from commencement of the Software Term with respect thereto (the “Warranty Period”). Any failure of the Software to function materially in accordance with the Documentation during the Warranty Period for such Software shall be a “non-conformity”. In the event Customer sends written notice to AppGate during the Warranty Period notifying AppGate of any non- conformity with respect to the Software (the “Non-Conformity Notice”), AppGate will use commercially reasonable efforts to remedy such non-conformity. In the event AppGate fails to remedy such non- conformity or provide a mutually agreed work around within thirty (30) days after its receipt of the Non-Conformity Notice, either party may terminate such non-conforming Software and any Support services directly related to such non-conforming Software by providing written notice to the other party, provided, that, the terminating party exercises its right to terminate before AppGate is able to remedy such non-conformity. Notwithstanding the foregoing, Customer shall not have the right to terminate such non-conforming Software or Support services, as applicable, in the event Customer fails to provide AppGate all information reasonably requested by AppGate to resolve the non- conformity. In the event of any delay in Customer providing AppGate any such information, the thirty (30) day period for AppGate to remedy such non-conformity or provide a mutually agreed work around shall be deemed extended by the number of days of such delay. In the event of termination of a Software license or Support services, as applicable, in accordance with this Section [10.a,](#_bookmark4) (i) Customer will not be liable for any “Early Termination Charge” in connection with such termination and (ii) Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Software or Support service, as applicable, 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 (the foregoing shall also apply in the event of a termination of a perpetual Software license (for which Customer is entitled to a refund of pre-paid fees relating to periods of time following termination) pursuant to AppGate’s right under the MA to terminate such perpetual Software license as a result of a Claim or potential infringement by the Software of a third party’s intellectual property rights. Notwithstanding anything in this Section [10.a](#_bookmark4) to the contrary, this warranty shall not apply to any non-conformity to the extent resulting from (1) any use of the Software other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software 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 Software in violation of applicable law, (5) use of the Software in combination with any hardware, software, application, equipment, technology or material that was not provided by AppGate, (6) Customer’s or any Authorized User’s failure to use any new or corrected version of the Software made available by AppGate to Customer, or (7) Customer’s or any Authorized User’s negligence or willful misconduct. Except as set forth in the Support Terms with respect to the Software, if any, this Section [10.a](#_bookmark4) states AppGate’s sole obligation, and Customer’s sole and exclusive remedy, in connection with any failure of the Software to function in accordance with the Documentation.

* 1. Professional Services Warranties. AppGate warrants that (i) it and the AppGate personnel performing the Professional Services have the necessary knowledge, skills, experience, and qualifications to perform the Professional Services in accordance with the applicable Order Form(s), and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.
  2. Support Warranties. AppGate warrants that (i) it and the AppGate personnel performing the Support have the necessary knowledge, skills, experience, and qualifications to perform the Support in accordance with the applicable Support Terms, and (ii) the Support will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

1. **Hardware**. AppGate is not the manufacturer of any Hardware resold by AppGate to Customer hereunder. Notwithstanding anything in the Schedule Agreement to the contrary, Hardware is resold “as is” without indemnification, support or warranties of any kind, provided, that, AppGate will assign to Customer all assignable warranties and indemnities granted to AppGate by the party that AppGate purchased such Hardware from. In no event will AppGate be liable for any losses, costs, expenses or damages whatsoever, including, without limitation, direct, incidental, special, indirect, or consequential damages, loss of business, loss of profits, loss of data, or tortious conduct relating to, or arising from the Hardware.

# Intellectual Property Ownership; Feedback.

* 1. AppGate Intellectual Property. Customer acknowledges that, as between Customer and AppGate, AppGate owns all right, title and interest, including all intellectual property rights, in and to AppGate Intellectual Property.
  2. Feedback. AppGate encourages Customer to provide suggestions, proposals, ideas, recommendations and other feedback (collectively, “Feedback”) regarding changes or improvements (including, without limitation, new features or functionality relating thereto) to AppGate Intellectual Property. To the extent Customer provides such Feedback, notwithstanding the definition of “Confidential Information” in the Schedule Agreement to the contrary, in no event shall any such Feedback be deemed to be Customer’s Confidential Information. AppGate shall have the right to make, use, sell, offer for sale, import and otherwise exploit such Feedback (including by incorporation of such Feedback into AppGate Intellectual Property) without restriction. Vendor acknowledges that the ability to use this Agreement and any Feedback provided as a result of this

Agreement in advertising is limited by GSAR 552.203-71. Customer hereby assigns to AppGate on Customer’s behalf, and on behalf of its employees, contractors and/or agents, all right, title and interest in, and AppGate is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although AppGate is not required to use any Feedback.

# Intentionally Omitted.

1. **Uniform Computer Information Transactions Act and United Nations Convention on Contracts for the International Sale of Goods**. Notwithstanding anything in the Schedule Agreement to the contrary, including, for the avoidance of doubt, the “Governing Law” and “Venue” sections of the MA, in no event shall the Uniform Computer Information Transaction Act or the United Nations Convention on Contracts for the International Sale of Goods apply to the Schedule Agreement.
2. **Export Regulation**. The Products, the underlying software and technology and the Documentation may be subject to US export controls and sanctions laws and regulations, including, without limitation, the US Export Administration Regulations and the various economic sanctions measures administered by the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). Customer shall not, directly or indirectly, sell, export, re-export, transfer, re- transfer, provide or release the Products, the underlying software or technology or the Documentation to, or make the Products, the underlying software or technology or the Documentation accessible from, any jurisdiction, country, person or entity without first securing all applicable U.S. government export authorizations, nor will Customer sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to any jurisdiction, country, person or entity, or for any end-use, that is prohibited by applicable law, rule, or regulation. Customer shall not, directly or indirectly, sell, export, re-export, transfer, re-transfer, provide or release the Products, the underlying software or technology or the Documentation to any party named on OFAC’s Specially Designated Nationals list or any other U.S. government list of prohibited parties, or to any entity owned 50% or more in the aggregate by any sanctioned party or parties, nor shall Customer use the Products, underlying software or technology, or the Documentation, directly or indirectly, in connection with any prohibited party. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, transferring, re-transferring, providing or releasing, or otherwise making the Products or the underlying software or technology or the Documentation available outside the US.
3. **Modifications to Support Terms**. AppGate may modify applicable Support Terms pursuant to the definition of “Support Terms” in Section [17](#_bookmark5) (“Support Terms Change”). Each modification that does not materially and adversely affect Ordering Activity’s use of the Products or Ordering Activity’s rights or obligations hereunder, shall go in to effect on the date specified by AppGate, whether such date is during the then-current term or thereafter. Any modification that materially and adversely affects Ordering Activity’s use of the Products or Ordering Activity’s rights or obligations hereunder

(“Material and Adverse Changes”), shall not go into effect prior to the expiration of the then-current term. If Ordering Activity elects to enter into a new term after any such Material and Adverse Change has gone into effect, Ordering Activity shall be subject to such Material and Adverse Change during such new term. A Material and Adverse Change is defined as (1) terms that materially and adversely affect Ordering Activity’s rights; (2) terms that increase the Ordering Activity’s prices; (3) terms that materially and adversely decrease overall level of service; or (4) terms that materially and adversely limit any other Ordering Activity right addressed elsewhere in the contract. In accordance with GSAR 552.212-4(w)(1)(vi), for Material and Adverse Changes, the revised terms must be incorporated into the contract using a bilateral modification.

# Definitions.

* 1. “Authorized User” means an employee, representative or agent of Customer who is authorized by Customer to access and use the Software licensed hereunder, as applicable, and Documentation applicable to such Software solely in connection with the use of such Software. In the event an Order Form sets forth limitations on the number and/or type of Authorized Users permitted with respect to the Software licensed thereunder, Customer shall be required to comply with all such limitations. Each Authorized User shall be required to have a unique username and password. Such username and password shall be personal to such Authorized User and Customer shall not permit an Authorized User to, and an Authorized User shall not, share its username and password with other Authorized Users.
  2. “AppGate Intellectual Property” means the Software, Documentation, any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing and any other AppGate intellectual property.
  3. “Customer Data” shall have the meaning set forth in the MA, provided, that, if “Customer Data” is not defined in the MA, “Customer Data” shall mean data, information, material or other content (but in all cases excluding AppGate’s Confidential Information and AppGate 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.
  4. “Documentation” means AppGate’s then-current user manuals, handbooks, training materials, technical manuals and guides relating to the Software.

# [Intentionally Omitted.]

* 1. “Order Form” means an order form, quote, statement of work or other ordering document that includes the types and details of the specific Products ordered by Customer and agreed to be provided by AppGate. Any Products licensed or purchased by Customer through the Portal will be deemed to be licensed or purchased pursuant to an “Order Form” notwithstanding that the Products are licensed or purchased through the Portal and neither party physically or electronically executed an actual “Order Form” document.
  2. “Permitted Use” means use of the Software solely in accordance with the Documentation and by an Authorized User for the benefit of Customer in the ordinary course of its internal business

operations and in accordance with all of the applicable terms and conditions of the Schedule Agreement, including, without limitation, any terms, conditions and limitations set forth in the Order Form with respect to the Software (e.g., maximum number of computers that the Software may be installed on, limitation on locations that the Software may be used at, maximum number of records that can be processed or stored at any given time).

* 1. “Schedule Agreement” means (i) the MA (but only to the extent the MA applies to this Schedule), (ii) this Schedule, (iii) all Order Forms and applicable Support Terms and Documentation, (iv) the underlying GSA schedule, and (v) any other document governed by, or that is incorporated by reference into, the MA (but only to the extent such document applies to this Schedule), this Schedule or any of the documents referred to in subclauses (iii) or (iv) hereof.
  2. “Software” means the software, in object code format, licensed by AppGate to Customer under an Order Form, and, in the event Customer is entitled to receive Support for such Software, includes all updates, bug fixes, patches, error corrections and other minor enhancements or improvements thereto that AppGate generally makes available free of charge to all licensees of the Software during Customer’s Support Term therefor.
  3. “Support” means the maintenance and support services specified in the Support Terms.
  4. “Support Terms” means the support terms located at [https://www.appgate.com/legal/federal/product-and-service-terms-](https://www.appgate.com/legal/federal/product-and-service-terms-and-conditions/cybersecurity-terms-and-conditions)

[and-conditions/cybersecurity-terms-and-conditions,](https://www.appgate.com/legal/federal/product-and-service-terms-and-conditions/cybersecurity-terms-and-conditions) if any, applicable to the Software licensed or purchased by Customer hereunder as in effect on the Effective Date and which may be modified by AppGate from time to time by posting updated support terms at such website or a successor website. Notwithstanding anything in the Support Terms to the contrary, in no event shall AppGate have any obligation to provide Support to the extent the issue for which Support is being requested resulted from (1) any use of the Software, other than in accordance with the Documentation and the Schedule Agreement, (2) a modification to the Software, 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 Software in violation of applicable law, (5) use of the Software, in combination with any hardware, software, application, equipment, technology or material that was not provided by AppGate, (6) Customer’s or any Authorized User’s failure to use any new or corrected version of the Software, made available by AppGate to Customer (unless the Support Terms expressly state that Support will be provided for a particular older version), (7) a defect in the version of the Software being used by Customer that has been corrected in a new or corrected version of the Software that has been made available by AppGate to Customer (regardless of whether the Support Terms expressly state that Support will be provided for such version of the Software being used by Customer), or (8) Customer’s or any Authorized User’s negligence or willful misconduct. The current versions of the Support Terms in effect as of September 2021 are attached hereto as Schedule I.

Schedule I

Current Version of Support Terms

# AppGate Support Terms

These AppGate Support Terms are subject to and incorporated into the AppGate Software Schedule and, if applicable, AppGate Hosted Service Addendum (collectively, the “Software Schedule” and, together with all other documents governing such Software Schedule or governed by, or incorporated by reference into, such Software Schedule, the “Agreement”), by and between the parties, and any terms not defined in these AppGate Support Terms shall have the meaning set forth therein. These AppGate Support Terms shall be deemed “Support Terms” as defined in the Software Schedule.

# Support Levels

Support Availability and Contact Information

|  |  |  |
| --- | --- | --- |
| **Customer**  **Region** | **Support Hours** | **AppGate Contacts** |
| **North America** | **Business Days / Business Hours -** M-F, 7:00am - 7:00pm Eastern Time  (excluding US bank holidays) | **Web:** support.appgate.com/  **Email:** [appgatesdp.support@appgate.com](mailto:appgatesdp.support@appgate.com)  **Phone:** 1-877-522-6305 |
|  | 24x7x365 phone support for Production Down or High Severity  Incidents only |  |
| **Europe, Middle East, and Africa (EMEA); Asia**  **Pacific (APAC)** | **Business Days / Business Hours -**  M-F, 08:00 – 19:00 CET  (excluding Swedish national holidays) | **Web:** support.appgate.com/  **Email:** [appgatesdp.support@appgate.com](mailto:appgatesdp.support@appgate.com)  **Phone -** +44 800-031-8079 |
|  | 24x7x365 phone support for  Production Down or High Severity  Incidents only |  |

Response Service Level Objectives (“Service Level Objectives”)

AppGate will make all reasonable efforts to respond to reported problems per the following table. AppGate does not offer remediation for missed Service Level Objectives.

|  |  |
| --- | --- |
| **Severity Category** | **Support Response** |
| **Production Down Incident** | Response in 4 Business Hours or less |
| **High Severity Incident** | Response in 8 Business Hours or less |
| **Medium Severity Incident** | Response in 2 Business Days or less |
| **Low Severity Incident** | Response in 3 Business Days or less |

# Definitions

1. “Customer Technical Personnel” means a qualified individual, knowledgeable in Customer’s systems and business and who has been trained in use of the Products by basic product training (self-study or instructor-led). Each Customer Technical Personnel must have a login for the Support portal using his or her valid company domain email address.
2. “Evaluation Versions” means any Products provided on a no-charge or evaluation basis.
3. “Incident” means each individual issue with the Products reported to AppGate.
4. “Previous Version” means upon a commercially available release of the Products (“New Version”), any previously released version(s) of the Products will be deemed a Previous Version. Customer may replace the Previous Version (including all installed copies) with the New Version. Customer may not use the New Version of the Products and the Previous Version of the Products at the same time in a Production Environment.
5. “Production Environment” is the Customer’s production instance of the Products.
6. “Products” means the Products (as defined in the Software Schedule) that Customer is entitled to Support for in accordance with the Agreement.

# Scope of Support

* 1. **In General**

Support consists of the following:

1. web-based submissions of Incidents submitted by up to the number of designated Customer Technical Personnel specified in these AppGate Support Terms,
2. access to an online secure site that contains license keys and latest product downloads, and
3. the provision of guidance and troubleshooting to Customer in connection with questions and issues arising from the following Customer activities with respect to the Products:
   1. Installation and Downloads: Support for installation includes providing guidance and troubleshooting in connection with Customer’s downloading and installing of the Products.
   2. Basic Configuration Issues: Support for configuration includes troubleshooting Customer’s configuration settings for existing installations on Supported Platforms (as defined below) to ensure proper operation and connectivity.
   3. Usage Issues: AppGate qualified personnel will answer Customer’s "how to" questions related to standard Product usage.
   4. New Version Issue: Support for issues regarding replacing a Previous Version with a New Version of the Products.

# Efforts to Correct the Products

AppGate will make commercially reasonable efforts to correct bugs or other errors in the Products. AppGate is not required to correct every bug, error, or problem with the Products reported to AppGate.

Reported issues will only be progressed during normal business hours (unless otherwise agreed in an Order Form).

# Support Exclusions

The following are excluded from AppGate’s Support obligations:

1. any version of the Products other than those versions specified as being supported under Section 3.4 below,
2. Evaluation Versions of the Products or other Products provided at no charge,
3. training, customization, integration and any issues arising from non-standard usage of the Products, and
4. any on-site services or remote access services (unless AppGate requests remote access to assist AppGate in understanding an issue).

In all cases, AppGate only provides Support in connection with Products purchased from AppGate or an authorized reseller.

AppGate has no obligation to accept calls or messages from, or otherwise interact with, personnel other than the designated Customer Technical Personnel.

# Product Versions Covered

AppGate will only provide Support for the versions of Products specified at https://[www.appgate.com/essential-defense/appgate-](http://www.appgate.com/essential-defense/appgate-) sdp/support. AppGate’s Support obligations do not cover third-party hardware, operating systems, networks, or software or any other versions of the Products.

# Platforms Supported

AppGate supports use of the Products only on the platforms specified in the Product technical specification with respect to the Products (the “Supported Platforms”).

# Submitting Incidents

* 1. **Who May Submit Incidents**

Customer must designate authorized Customer Technical Personnel at time of purchase (at least one), unless otherwise specified, who will be the person registering the license. That individual(s) may submit change requests to the list of authorized Customer Technical Personnel in writing through the channel(s) specified for the plan selected. Unless specified in an Order Form, Customer may have no more than 5 Customer Technical Personnel at once. Customer may substitute Customer Technical Personnel in its discretion.

# How to Submit Incidents

To ensure the fastest response to an Incident, Customer Technical Personnel should use the Support Portal located at support.appgate.com/. The Support Portal provides access to AppGate’s self-help knowledge base, download services as well as viewing and creation of new Support cases.

Requests can also be logged by sending email to [appgatesdp.support@appgate.com.](mailto:appgatesdp.support@appgate.com) Customers can also contact AppGate via the Support hotline after opening an electronic ticket request via the Support Portal or email.

Once an Incident has been submitted, the ‘initial response’ is defined as the period in which initial investigations into the problem are made and resolution details or a plan of action are defined. Response time is deemed to commence from when AppGate Support has been notified of any issue within normal business hours or from the commencement of normal business hours following receipt of an issue.

# Escalation of Incidents

1. If Customer requests escalation of an existing Incident, the Customer Technical Personnel should:
   1. Call the Support phone number,
   2. State that this is an escalation of an existing Incident and provide the case number and Support agent responsible if possible, and
   3. Provide Customer name and contact details.
2. In the unlikely event that the Support team does not respond, the Customer Technical Personnel should get in touch with the dedicated Customer Account Manager to assist with the escalation.
3. The escalation response expectations are:
   1. During Business Hours: Response within 2 hours of the acknowledged escalation request.
   2. After Business Hours: For Production Down escalations, an initial response should be expected within 4 elapsed hours of the acknowledged escalation request. For all other severity levels and questions, 1 business day of the acknowledged escalation request.

# AppGate Incident Response.

For each Incident reported by Customer in accordance with these procedures, AppGate will:

1. Set a Severity Level for the Incident in accordance with the terms below.
2. Use commercially reasonable efforts to respond to the Incident within the time specified in these AppGate Support Terms.
3. Analyze the Incident and, as applicable, verify the existence of the problem(s) resulting in the Incident, which may include requesting that Customer provide additional information, logs, and re-execution of commands to help identify the root cause and dependencies of the reported issue.
4. Give Customer direction and assistance in resolving the Incident.
5. Keep a record of ongoing communications with Customer.
6. Use commercially reasonable efforts to resolve the Incident in accordance with the target response times set forth in these AppGate Support Terms.
7. Upon request of Customer, discuss Severity Level and ongoing communication time frame.

AppGate may modify the Incident settings.

# Severity Levels

AppGate will prioritize Incidents according to the following criteria:

1. “Production Down” cases are the highest priority and receive first attention. In such cases, the Products are either completely inoperable or inaccessible to all of Customer’s users.
2. “High Severity” cases indicate an issue has severely impacted the performance of the Product’s intended use and is causing a material and adverse impact to the majority of Customer’s users.
3. “Medium Severity” cases reflect an issue that has an impact on the performance or functionality of the Products as documented but it is impacting the minority of the Customer’s users.
4. “Low Severity” cases reflect an issue that has a minimal impact on the performance or functionality of the Products or is a recommendation for future development or product improvement.

# Resolution and Closure of Incidents

Incidents will be closed in the following manner:

1. For solvable issues, depending on the nature of the issue, the resolution may take the form of an explanation, recommendation, usage instructions, workaround instructions, or advising Customer of an available software fix.
2. In the event that custom or unsupported plug-ins or modules are used, AppGate may ask, in the course of attempting to resolve the issue, that the Customer remove any unsupported plug-ins or modules. If the problem disappears upon removal of an unsupported plug-in or module, then AppGate may consider the issue to be resolved. Supported plug-ins or modules are defined as those listed and defined as supported in the AppGate Documentation.
3. For issues outside of scope of Support, AppGate may also close issues by identifying the Incident as outside the scope of the Support or arising from a version, platform, or usage case which is excluded from these AppGate Support Terms.
4. AppGate may close a case if the Customer Technical Personnel has not responded to two attempts or more made by AppGate to collect additional information required to solve the Incident.
5. Customer may request Incidents be re-opened. At AppGate’s sole discretion, Incidents will be reopened for further investigation if the Incident is deemed to be solvable.

Customer is responsible for providing accurate information and documentation in order for AppGate to reproduce the issue or Incident. This includes written detailed descriptions of the issue or Incident, registry records, log files and any other information required by AppGate.