

## Appgate Hosted Service Addendum

This Appgate Hosted Service Addendum (this "Addendum") is entered into by and between Immunity Federal Services, LLC d/b/a Appgate Federal, a Delaware limited liability company ("Appgate"), and Customer, and is effective on the Effective Date for this Addendum. This Addendum is governed by that certain Appgate Software Schedule (the "Schedule") entered into by and between Customer, or its Affiliate, and Appgate, located at [https://www.appgate.com/pdfs/legal/federal/Appgate\\_Software\\_Schedule.pdf](https://www.appgate.com/pdfs/legal/federal/Appgate_Software_Schedule.pdf). In the event the Schedule is entered into by an Affiliate of Customer, then the Schedule shall apply to this Addendum 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 Schedule.

1. **Products.** This Addendum sets forth the additional terms generally applicable to all Hosted Services purchased under the Schedule Agreement, as well as terms applicable only to specific Hosted Services as noted herein. The additional terms set forth in this Addendum supplement the terms set forth in the Schedule which apply to such Hosted Services.

2. **Customer's Accounts.** Customer and each Authorized User are responsible for maintaining the confidentiality of all username and password information with respect to the Hosted Services and for ensuring that any such username and password is not used by anyone to access the Hosted Services other than the Authorized User to which such username and password was issued. Customer is entirely responsible for any and all activities that occur under Customer's accounts and all charges incurred from use of the Hosted Services accessed using one of Customer's accounts, in either case resulting from access provided by Customer, directly or indirectly. Upon becoming aware of any unauthorized use of a Customer account or any other breach of security relating to a Customer account or the Hosted Services, Customer agrees to immediately notify Appgate. Appgate shall have no liability under the Schedule Agreement for any loss or damage arising from Customer's failure to comply with these requirements.

3. **Suspension of Hosted Services.** Notwithstanding anything in the Schedule Agreement to the contrary, in addition to Appgate's rights to suspend Products under the Schedule, Appgate may immediately suspend Customer's and/or any Authorized User's access to all or any portion of the Hosted Services if Appgate reasonably believes that (i) Customer or any Authorized User's use of the Appgate Intellectual Property in violation of the Schedule Agreement disrupts or poses a security risk to the Appgate Intellectual Property or to any other customer or vendor of Appgate, (ii) Customer, or any Authorized User, is using the Appgate Intellectual Property for fraudulent or illegal activities, (iii) Appgate's provision of the Hosted Services to Customer or any Authorized User is prohibited by applicable law, or (iv) Customer or any Authorized User is accessing or using any of the Appgate Intellectual Property in violation of the Schedule Agreement. Any suspension by Appgate pursuant to this Section 3, shall be deemed a "Service Suspension". Appgate shall exercise commercially reasonable efforts to notify Customer prior to suspending any Hosted Service pursuant to this Section 3. In the event Appgate does not notify Customer prior to suspending any Hosted Service, Appgate shall notify Customer of the Service Suspension as promptly as reasonably practical thereafter. In the event of any Service Suspension pursuant to this Section 3, Customer shall continue to be obligated to pay the fees for the Hosted Services during such period of suspension. If Appgate

suspends a Hosted Service, unless Appgate has subsequently terminated such Hosted Service in accordance with the terms of the Schedule Agreement, Appgate will resume the suspended Hosted Service as soon as reasonably practical after Appgate is reasonably satisfied that the reason giving Appgate the right to suspend has been cured or resolved, as applicable. Appgate will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

#### 4. **Customer Indemnification; INDIRECT/CONSEQUENTIAL DAMAGES WAIVER AND DAMAGE CAP.**

a. **Customer Indemnification.** In the event Customer is a U.S. Federal Government Agency, this Section 4.a (other than this sentence) and 4.b shall not apply. Customer will defend, indemnify and hold harmless Appgate, its Affiliates and each of their respective agents, officers, directors, representatives and employees from and against all Claims, to the extent arising from (i) any use of the Hosted Service other than in accordance with the Documentation and the Schedule Agreement, (ii) a modification to the Hosted Service made or caused by Customer or any other party acting on behalf of Customer, (iii) any customer data, (iv) use of the Hosted Service in violation of applicable law or for any other unauthorized purposes, (v) use of the Hosted Service after termination of the Hosted Service Term with respect thereto, (vi) use of the Hosted Service in combination with any hardware, software, application, equipment, technology or material that was not provided by Appgate, (vii) Customer's (or any Authorized User's) failure to use any new or corrected version of the Hosted Service made available by Appgate to Customer, or (viii) Customer's or any Authorized User's negligence or willful misconduct.

b. **Indemnification Process.** Customer's obligations under this Section 4 are contingent upon the indemnified party (i) providing prompt written notice to Customer 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 Customer is materially prejudiced thereby), (ii) allowing Customer to control the defense and any related settlement of any such Claim, and (iii) furnishing Customer with reasonable assistance, at Customer'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. Customer 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.

C. **INDIRECT/CONSEQUENTIAL DAMAGES WAIVER AND DAMAGE CAP.** NOTWITHSTANDING ANYTHING IN THE SCHEDULE AGREEMENT TO THE CONTRARY, (A) CUSTOMER'S OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS INDEMNIFIED PARTIES IN ACCORDANCE WITH THIS SECTION 4 SHALL NOT BE SUBJECT TO THE INDIRECT/CONSEQUENTIAL DAMAGES WAIVER OR DAMAGE

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CAP (AS EACH SUCH TERM IS DEFINED IN THE MA) AND (B) ALL OF APPGATE'S OBLIGATIONS WITH RESPECT TO CUSTOMER DATA, IF ANY, SHALL BE SUBJECT TO BOTH THE INDIRECT/CONSEQUENTIAL DAMAGES WAIVER AND THE DAMAGE CAP. NOTWITHSTANDING ANYTHING IN THE SCHEDULE AGREEMENT TO THE CONTRARY, IN THE EVENT CUSTOMER IS A U.S. FEDERAL GOVERNMENT AGENCY, IN NO EVENT SHALL THE INDIRECT/CONSEQUENTIAL DAMAGES WAIVER, DAMAGE CAP OR ANY OTHER LIMITATION OF LIABILITY IN THE SCHEDULE AGREEMENT APPLY WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BROUGHT BY APPGATE AGAINST CUSTOMER UNDER THE SCHEDULE AGREEMENT TO THE EXTENT ARISING FROM (A) ANY USE OF THE HOSTED SERVICE OTHER THAN IN ACCORDANCE WITH THE DOCUMENTATION AND THE SCHEDULE AGREEMENT, (B) A MODIFICATION TO THE HOSTED SERVICE MADE OR CAUSED BY CUSTOMER OR ANY OTHER PARTY ACTING ON BEHALF OF CUSTOMER, (C) ANY CUSTOMER DATA, (D) USE OF THE HOSTED SERVICE IN VIOLATION OF APPLICABLE LAW OR FOR ANY OTHER UNAUTHORIZED PURPOSES, (E) USE OF THE HOSTED SERVICE AFTER TERMINATION OF THE HOSTED SERVICE TERM WITH RESPECT THERETO, (F) USE OF THE HOSTED SERVICE IN COMBINATION WITH ANY HARDWARE, SOFTWARE, APPLICATION, EQUIPMENT, TECHNOLOGY OR MATERIAL THAT WAS NOT PROVIDED BY APPGATE, (VII) CUSTOMER'S (OR ANY AUTHORIZED USER'S) FAILURE TO USE ANY NEW OR CORRECTED VERSION OF THE HOSTED SERVICE MADE AVAILABLE BY APPGATE TO CUSTOMER, OR (VIII) CUSTOMER'S OR ANY AUTHORIZED USER'S NEGLIGENCE OR WILLFUL MISCONDUCT.

5. **Customer Data.** Appgate acknowledges that, as between Appgate and Customer, Customer owns all right, title and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Appgate a non-exclusive, royalty-free, worldwide license to reproduce, distribute and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Appgate to provide the Hosted Services to Customer. Upon expiration or termination of the Hosted Service Term, Customer shall have no further access to any of the Customer Data used in connection with the Hosted Service or any configurations used in connection with the Hosted Service. Appgate shall provide any such Customer Data to Customer in Appgate's standard database export format upon receipt of Customer's request within thirty (30) days of expiration or termination of the Hosted Service Term. After thirty (30) days following expiration or termination of the Hosted Service Term, if Customer has not requested the return of its Customer Data, Appgate shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control.

6. **Modifications to SLAs.** Unless a modification is required by applicable law or industry standard, if Appgate modifies

an applicable SLA pursuant to the definition of "SLA" in Section 7 ("SLA Change") and Customer believes that its use of a Product is, or its rights or obligations with respect to a Product are, materially and adversely affected by the SLA Change, Customer may, at any time prior to the effective date of such SLA Change, send written notice to Appgate indicating such Product(s) and including details sufficient to demonstrate the adverse material affect. With respect to any Products set forth in Customer's written notice that Customer and Appgate mutually agree that the SLA Change materially and adversely affects Customer's use of such Products, or Customer's rights or obligations with respect to such Products (the "Affected Products"), Appgate may (a) agree to waive the applicability of the SLA Change with respect to the Affected Products, provided, that, any such waiver shall not be made by Appgate until the parties execute an amendment to the Schedule Agreement setting forth the terms of such waiver, or (b) decline to waive the applicability of the SLA Change with respect to the Affected Products. In the event Appgate declines to waive the applicability of the SLA Change with respect to the Affected Products, Customer may, within thirty (30) days of receipt of Appgate's written notice of Appgate's election to do so, terminate the Affected Products by providing written notice of such termination to Appgate, with such termination to be effective as of the date set forth in Customer's written notice to Appgate, but no later than ninety (90) days from Customer's receipt of such notice from Appgate. In the event Customer terminates a Product pursuant to this Section 6, Customer will be entitled to a refund of all pre-paid fees with respect to such terminated Product which relate to periods of time following such termination.

## 7. Definitions.

a. "Customer Data" shall mean data, information, material or other content (but in all cases excluding Appgate's Confidential Information or 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 Hosted Services.

b. "SLA" means the service level agreement located at <https://www.appgate.com/legal/federal/product-and-service-terms-and-conditions/cybersecurity-terms-and-conditions>, if any, applicable to the Hosted Services purchased by Customer under the Schedule Agreement as in effect on the Effective Date and which may be modified by Appgate from time to time by posting an updated SLA at such website or a successor website and providing at least thirty (30) days advance 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.