

SOFTWARE EVALUATION AGREEMENT

This Software Evaluation Agreement (this "**Software Evaluation Agreement**") is effective on the effective date of the Order Form (as defined below) and is entered into by and between Evaluator (as defined below) and Appgate ("**Vendor**"). Evaluator and Vendor are referred to in this Software Evaluation Agreement collectively as the "**Parties**" or individually as a "**Party**." "**Evaluator**" means the Evaluator party to the Order Form governed by this Software Evaluation Agreement. "**Order Form**" means the service order, quote or order form entered into between Evaluator and Menlo Security, Inc. which is governed by this Software Evaluation Agreement.

Evaluator desires to evaluate, and Vendor will permit Evaluator to evaluate, the software product(s) listed in the Order Form (the "**Software**"), all in accordance with the terms and conditions hereof. The Parties agree as follows:

1. License to Software. Vendor grants to Evaluator a non-exclusive, non-transferable and non-sublicensable license to use the Software during the Term solely for use by Authorized Users in accordance with the Permitted Use. Such license also includes the non-exclusive, non-transferable and non-sublicensable right for Evaluator to use the Documentation applicable to the Software solely in connection with Evaluator's use of the Software. Vendor has no responsibility for (a) assisting Evaluator in installing or configuring the Software, (b) providing Evaluator instruction on use of the Software (except for any such instruction on use set forth in the Documentation with respect to the Software, as applicable), or (c) providing Evaluator with maintenance, support, hosting, training or any other services relating to the Software. Vendor reserves the right to modify, suspend or stop the Software (or any part thereof), either temporarily or permanently, at any time or from time to time, with or without prior notice to Evaluator.

2. Evaluator's Obligations; Restrictions. Evaluator shall be responsible for providing, at Evaluator's sole cost and expense, any IT and other systems required for Evaluator to evaluate the Software. Evaluator shall not (and shall not allow any Authorized User to) (1) use the Software or Documentation, as applicable, for any purposes beyond the scope of license with respect thereto granted in this Agreement or the Permitted Use, including, but not limited to, (a) for development or production purposes, or (b) in any commercial manner, or (2) in any way profit from the use of the Software or Documentation. Evaluator 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 Software, (iii) 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. Evaluator acknowledges that a threatened or actual breach by it of this Section 2 may result in immediate, irreparable harm to Vendor for which monetary damages may not be adequate compensation and, consequently, that Vendor 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. Vendor may deploy the Software with license key or other technology that prohibits use of the Software, as applicable, beyond the Term, license parameters or grant of right to use. Evaluator is responsible and liable for all uses of the Software and Documentation, as applicable, resulting from access provided by Evaluator, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Evaluator 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 this Agreement if taken by Evaluator will be deemed a breach of this Agreement by Evaluator. Evaluator shall make all Authorized Users aware of this 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.

3. Term; Termination. This Agreement will commence on the Effective Date and continue in effect for the term set forth in the Order Form (the "**Term**"), unless extended by mutual written agreement (e-mail acceptable) of the Parties. Either Party may terminate this Agreement with or without cause, without penalty for early termination, upon written notice to the other Party. Upon the expiration or termination of this Agreement for any reason, the license to use the Software granted by Vendor to Evaluator will also terminate. Upon termination of the license to use, Evaluator must immediately cease using the Software and Documentation and, to the extent applicable, return, delete or destroy all copies thereof as well as all other Vendor Intellectual Property relating thereto (in each case, in whatever form). Upon Vendor's request, Evaluator will certify in writing to Vendor that Evaluator has performed the foregoing obligation.

4. No Fees. The license granted by Vendor to Evaluator pursuant to Section 1 shall be at no cost to Evaluator.

5. No License or Grant of Intellectual Property Rights. Vendor reserves all rights not expressly granted to Evaluator in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Evaluator or any third party any intellectual property rights or other right, title or interest in or to the Vendor Intellectual Property. Evaluator acknowledges that, as between Evaluator and Vendor, Vendor owns all right, title and interest, including all intellectual property rights, in and to the Vendor Intellectual Property. Vendor's Intellectual Property includes any skills, know-how, modifications or other enhancements or derivative works developed or acquired by or on behalf of Vendor in the course of configuring, providing or managing the Software. Evaluator agrees that it will not disclose or publish performance benchmark results or test results with respect to the Software.

6. No Representations or Warranties; Disclaimer. (A) THE SOFTWARE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE” BASIS AND EVALUATOR’S USE OF THE SOFTWARE IS SOLELY AT ITS OWN RISK, (B) VENDOR 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, COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM, (C) VENDOR MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE SOFTWARE WILL BE COMPLETELY SECURE, FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF EVALUATOR, AND (D) VENDOR DOES NOT WARRANT THAT THE SOFTWARE IS OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED.

7. No Further Obligations. Nothing in this Agreement creates a legal obligation for either Party to purchase or license or sell any products, services or technology to or from the other or to enter into any further agreement with the other Party.

8. Confidentiality. Except as set forth in this 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 this Agreement or prosecuting or defending any claim arising under or with respect to this 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 this Agreement or prosecuting or defending any claim arising under or with respect to this Agreement. Nothing in this 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 8, neither receiving party’s obligations under this Section 8 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 8 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 8 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 this Agreement). Each party’s obligations under this Section 8 shall survive for two (2) years following expiration or termination of this 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 8 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 this Agreement). Each receiving party acknowledges that a threatened or actual breach by it of this Section 8 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 8 committed by its officers, employees, contractors, attorneys or other representatives.

9. Feedback. Vendor encourages Evaluator 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 Vendor Intellectual Property. To the extent Evaluator provides such Feedback, notwithstanding the definition of “Confidential Information” in this Agreement to the contrary, in no event shall any such Feedback be deemed to be Evaluator’s Confidential Information. Vendor shall have the right to make, use, sell, offer for sale, import and otherwise exploit such Feedback (including by incorporation of such Feedback into Vendor Intellectual Property) without restriction. Evaluator hereby assigns to Vendor on Evaluator’s behalf, and on behalf of its employees, contractors and/or agents, all right, title and interest in, and Vendor 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 Vendor is not required to use any Feedback.

10. Amendments. Except as otherwise set forth in this Agreement, this Agreement may only be amended, modified, supplemented or revoked by an instrument in writing signed by both parties.

11. 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 this Agreement shall operate or be construed as a waiver thereof.

12. Entire Agreement. This 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 this Agreement shall supersede the terms in any purchase order or other response made by Evaluator and no terms included in any such purchase order or response shall apply to this Agreement or in any way be binding upon Vendor.

13. Assignment; Successor and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither this Agreement nor any rights or obligations under this Agreement may be transferred, assigned or delegated, in whole or in part, by Evaluator, without Vendor's prior written consent, and any attempted transfer, assignment or delegation without such consent shall be null and void.

14. Governing Law; Venue; WAIVER OF JURY TRIAL. All matters arising out of or relating to this 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. Each of the parties agrees that all claims, demands, causes of action, actions, suits or proceedings arising out of, based upon or relating to this 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. The provisions of this Section 14 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. 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 this Agreement. 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.

15. 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.

16. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this 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.

17. Counterparts. The Order Form 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 the Order Form delivered by facsimile or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of the Order Form.

18. Limitation of Liability. NEITHER VENDOR, NOR ITS AFFILIATES, SHALL BE LIABLE FOR ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, 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, UNDER THE AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED, AND REGARDLESS OF WHETHER VENDOR OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY.

19. Notices. All notices in connection with this 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 Vendor to Evaluator through any portal made available by Vendor to Evaluator, any such notice to be sent to Vendor at legal@appgate.com or to Evaluator at Evaluator's address as set forth in Vendor's records. Either party may change its address for notices upon written notice to the other party in accordance with this Section 19.

20. Survival. The terms of any sections of this Agreement which by their nature are intended to extend beyond expiration or termination of this Agreement will survive expiration or termination of this Agreement.

21. Relationship of the Parties. Vendor is an independent contractor and shall not be deemed an employee or agent of Evaluator. Nothing in this 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.

22. No Third-Party Beneficiaries. Except as otherwise set forth in this 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, this Agreement.

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

24. 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) "Authorized User" means an employee, representative or agent of Evaluator who is authorized by Evaluator to access and use the Software licensed hereunder and Documentation applicable to such Software solely in connection with the Permitted Use.

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 this 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) "Documentation" means Vendor's then-current user manuals, handbooks, training materials, technical manuals and guides relating to the Software.

e) "Permitted Use" means use of the Software solely in a test environment (non-production environment) by an Authorized User for the purpose of Evaluator's internal evaluation of the Software. In all cases, Permitted Use shall be limited to use in accordance with the Documentation, this Agreement and all applicable laws, including, for the avoidance of doubt, the export control laws and regulations of the United States.

f) "Vendor Intellectual Property" means the Software, Documentation, any and all intellectual property provided to Evaluator or any Authorized User in connection with the foregoing and any other Vendor intellectual property.