

Defendify Master Services Agreement

Last Updated: July 17, 2020

This Master Services Agreement ("**Agreement**") will become a binding agreement between Defendify, Inc., a Delaware corporation ("**Defendify**," "**We**" or "**Us**") and the customer identified in a Quote that incorporates this Agreement ("**You**") (We and You together, the "**parties**"). If and when you agree to a Quote in the manner provided in that Quote, this Agreement will bind the parties and govern your use of all Defendify products expressly identified in the Quote.

This Agreement was last updated on the "Last Updated" date above. The Agreement is effective between You and Us as of the date on which you accept the Agreement (the "**Effective Date**"). This version of the Agreement does not bind any customer that accepted earlier versions of the Agreement unless such customers expressly agree to this updated Agreement.

1. Definitions. Words and phrases with initial capitals used herein have the following meanings.

"Defendify Marks" means any and all trademarks, service marks, logos or other branding owned or controlled by Defendify relating to the Service or Defendify. "Defendify Marks" does not include any Intellectual Property of any third party.

"Defendify Content" means information created by Us and made available to You through the Service, including (a) licensed software developed by Us, (b) the Documentation and (c) information that we will communicate to you during the Term through that software, by email and by other means of communication.

"Documentation" means the document(s) that We make available to You and/or Users from time to time that provide instructions for using the Service.

"Intellectual Property" means copyrights, patents, trademarks, trade secrets, and trade dress.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Partner" means a third-party sales representative, affiliate marketer or agent of one or more Defendify Products, authorized by Defendify, from which You license or purchase Defendify Products, subject to this Agreement.

"Quote" means a written document setting forth Defendify services to be purchased by You and expressly incorporating this Agreement.

The "**Service**" means the particular Defendify Product plan for which you have signed up, as set forth in your Quote, and all services and content included with that plan. If you switch from one Defendify plan to another, then this Agreement will govern that new plan instead.

"Third-Party Materials" means information, content or other material that is created by, provided by, originating in or owned by a Third-Party Service and which We make available through the Service.

"Third-Party Service" means unmodified software or services provided by third parties and which is either (a) provided by Defendify or its Partner to You in connection with Defendify Products; or (b) required by Us to be obtained by You in order for You to use Defendify Products.



"**User**" means an individual who is authorized by You to use the Service, for whom You have purchased a subscription, and to whom You (or, when applicable, We at Your request) have supplied a user identification and password.

"**You**" or "**Your**" means the company or other legal entity agreeing to this Agreement.

"**Your Data**" means electronic data and information submitted by or for You or any of Your Users to the Service.

"**Your Systems**" means any and all hardware, software or other systems that You own, lease or control.

2. The Defendify Service

The Service is a suite of software and services developed and offered by Defendify and Third-Party Services. The elements of the Service developed by Defendify are delivered to You in the form of a Software-as-a-Service application that does not require or allow download on Your Systems and is accessed by visiting our website, app.defendify.io, as well as (depending on the particular Defendify Product to which you subscribe) email messages and other communications between Us and You and/or Your Users. Some elements of the Service are Third-Party Materials that may require installation on Your Systems or Your Users' hardware or software. To the extent that the Service includes software or services developed, owned or provided by Defendify, Your use of them will be pursuant to Defendify's license(s) to You. To the extent that the Service includes Third-Party Services, Your use of them (and, if relevant, Your Users' use of them) will be pursuant to those services' own licenses, terms of use, or other agreements.

3. Our Responsibilities

3.1. Provision of the Service. During the Term, We will (a) make the Service available to You pursuant to this Agreement and (b) use commercially reasonable efforts to make the online elements of the Service available 24 hours a day, 7 days a week, 365 days a year, except for: (i) planned downtime (of which We will give advance electronic notice), (ii) downtime resulting from downtime of any of the Third-Party Services or of our hosting provider; and (iii) force majeure events as this Agreement provides.

3.2. Protection of Your Data. We will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We will not disclose Your Data to any third party or use it for any other purpose not necessary for us to provide the Service or not permitted by our Privacy Policy (<https://www.defendify.io/privacy>). This means that we will restrict access to Your Data to our employees and independent contractors who require access in order to perform hereunder. Our obligations under this section will not apply to the extent that any of Your Data is (a) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of Us, (b) subsequently disclosed to Us on a non-confidential basis by a third party not having a confidential relationship with You that rightfully acquired such information, (c) communicated by Us to a third party with your prior written consent, or (d) disclosed by Us pursuant to a subpoena, court order or request by law enforcement or otherwise required by law (in which case, to the extent We may lawfully do so, We will provide you with written notice of such disclosure to afford You the option to exercise any rights You may have to challenge such disclosure).

3.3. Disclaimer. Except for providing the Documentation and as otherwise expressly provided herein, We will not provide training, onboarding or other customer services to you or any third party unless that service is outlined and purchased within your Quote.

4. Intellectual Property

4.1. License Grant. Subject to this Agreement and conditioned on Your compliance with it, We hereby grant You and each of Your Users a non-exclusive, fully paid-up, worldwide, limited, non-transferable license to use the Service, the Defendify Content and the Defendify Marks only for the Permitted Uses during the Term. The license in this section extends to any and all of Your subsidiaries, parents and corporate affiliates and all employees of each.

4.2. Permitted Uses. The "Permitted Uses" means (a) copying, performing, displaying, modifying, distributing and transmitting the Defendify Content solely to the extent necessary for You to display Defendify Content to all Users worldwide (b) using and displaying the Defendify Marks in the manner dictated by the Service. The Permitted Use includes the right and license to print physical copies of Defendify Content for use solely by Your Users. The Permitted Use excludes the conduct set forth in section 5.2 below ("Usage Restrictions").

4.3. Ownership. All right, title, and interest in the Intellectual Property embodied in the Service, the Defendify Content and the Defendify Marks will belong solely and exclusively to Us or to the Third-Party Service that owns such Intellectual Property. Any and all Intellectual Property rights in Third-Party Materials belong to their respective owners. You will have no rights in the Service except as this Agreement expressly grants.

5. Your Responsibilities and Use of the Service

5.1. Your Compliance with this Agreement. During the Term, You will (a) ensure that all Users use the Service consistent with this Agreement, with the Documentation and with applicable laws; (b) be responsible for the accuracy, quality and legality of Your Data, the means by which You acquired Your Data and Your use of Your Data with the Service; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any such unauthorized access or use; and (d) comply with any terms of service or similar agreements used by any Third-Party Services that you may use in connection with the Service.

5.2. Usage Restrictions. You will not do or attempt to do any of the following: (a) sell, resell, license, sublicense, distribute, rent or lease any part of the Service or any Defendify Content, or disclose any of them to any third parties without compensation; (b) use the Service to store, use or transmit material in violation of third-party privacy or Intellectual Property rights; (c) use the Service to store or transmit Malicious Code, or disable, impair or conduct penetration tests or scans of any hardware, software or other systems that We own, lease or control; (d) interfere with or disrupt the Service's integrity or performance; (e) attempt to gain unauthorized access to the Service; (f) permit direct or indirect access to or use of the Service or Defendify Content in a way that circumvents a contractual usage limit, or access or use any of Our Intellectual Property except as this Agreement allows; (g) modify, copy, or create derivative works based on the Service or Defendify Content or any part of either of them; (h) frame or mirror any part of the Service or any Defendify Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation; (i) remove or modify any attributions, proprietary marks or notices that We may include in the Service or Defendify Content, including Defendify Marks or any other attributions, property marks or notices of Third-Party Services or relating to Third-Party Materials; or (j) disassemble, reverse engineer, or decompile any part of the Service or any Defendify Content, or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service or (4) determine whether the Service is within the scope of any patent.

Any use of the Service in breach of this Agreement by You or Users that in Our sole discretion threatens the security, availability or functioning of the Service may result in Our immediate suspension of the Service (in which case, however, We will use commercially reasonable efforts to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension).

5.3. Subscriptions. The Service is purchased as a subscription. Depending on the extent to which you actually choose to use the Service during the Term, your actual use of the Service may not make full use of all aspects of the Service in a particular month.

5.4. Third-Party Services. We engage in authorized and permitted use of Third-Party Services to provide the Defendify Products. As an end user of a Defendify Product, You are authorized to use Third-Party Services under the licenses or other terms of their respective owners.

5.5. Insurance. You understand that it is recommended that you have appropriate types and levels of insurance covering You for losses, damages or expenses arising out of a cybersecurity event, incident or breach.

6. Suspension or Modification of the Service

6.1. We may suspend, terminate, withdraw, or discontinue the Service as to You upon receipt of a subpoena or law enforcement request or as this Agreement otherwise permits.

6.2. We may modify the Service and/or Defendify Content at any time during the Term, with or without prior notice to You, and We will not be liable to You or to any third party for any such modification. It may be necessary for Us to perform scheduled or unscheduled repairs or maintenance or remotely patch or upgrade the Service, which may temporarily degrade the quality of the Service or the Defendify Content or result in a partial or complete outage of the Service or the Defendify Content. We may also discontinue the inclusion of some or all Third-Party Services in the Service to the extent that their respective owners or publishers discontinue them.

7. Term and Termination

7.1. The Term of this Agreement begins on the "Effective Date" and ends at the completion of the Term set forth in your Quote (the "Initial Term") unless terminated earlier or extended in the ways described here. This Agreement will automatically renew for successive one-year periods ("Renewal Periods") after the Initial Term's end unless you provide us with written notice that you do not wish to renew at least 30 calendar days before the start of a Renewal Period, in which case the Term will terminate at the end of the then-current Initial Term or Renewal Term. The "Term" means the Initial Term and all Renewal Periods together.

7.2. We may terminate this Agreement and your subscription(s) under it (a) immediately by notice to You if You have failed to cure any material breach of this Agreement within 30 days after receiving notice of same from Us or if You become insolvent, are liquidated or dissolved or if any proceedings are commenced by, for or against You under any bankruptcy, insolvency, reorganization of debts or debtors relief law, or law providing for the appointment of a receiver or trustee in bankruptcy; (b) on 30 days' notice to You if You have breached any payment obligation under this Agreement; or (c) on Our 90 days' notice to You without cause.

7.3. Any termination of this Agreement will also contemporaneously terminate all licenses and rights that it grants.

7.4. If this Agreement is terminated pursuant to sections 7.2(a) (uncured material breach) or 7.2(c) (Our termination for convenience), then We will promptly refund the pro rata portion of any Fee paid by You for the portion of the Service not furnished to You.

7.5. 30 days after termination, we may destroy any Confidential Information that you have provided to Us. It is therefore essential that You not provide us with any unique copies of any important materials and always retain copies of any materials that you provide to us.

8. Fees and Payment

8.1. Fees. In consideration of Your access to the Service, You will pay Us, at the beginning of each year of the Term, the Fee specified in Your Quote (subject to change under section 8.2). The Fee for any Renewal Term is payable within 7 calendar days after the renewal date. Payments must be made in the manner specified in Your Quote. All Fees are nonrefundable except as expressly provided herein. If Your Quote outlines a payment plan providing for semi-annual payments and You fail to make any payment when due, then We may charge interest on the past due amount at 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate allowed by law.

8.2. Fee Adjustments. At any time more than thirty calendar days before the end of the Initial Term or a Renewal Term, We may notify You that the License Fee will change in the next Renewal Term. You will then have the option to terminate your subscription(s), but your subscription(s) will remain in effect unless and until you terminate. If you do not terminate, you will be deemed to have agreed to our changed License Fee.

8.3. Taxes. Each party will be responsible for its own taxes properly levied on it by virtue of its undertakings hereunder.

8.4. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

9. Representations and Warranties

Each party represents to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement.

10. DISCLAIMERS

The Service is provided "as is" without warranty of any kind. We disclaim all warranties to You and to any third party, whether express, implied or statutory, regarding the Service, including without limitation any and all implied warranties of merchantability, accuracy, results of use, reliability, fitness for a particular purpose, title, non-infringement of third-party rights and any warranties or conditions arising out of course of dealing or usage of trade. Further, We disclaim any warranty that the Service will be uninterrupted, error-free, virus-free, or secure, or that Your Systems will be protected from every form of attack. Cybercrime is a continually growing and changing risk. We cannot control the behavior and actions of You or Your Users, either of which could permit or cause cybercrimes against You, Your Users and/or Your Systems.

We do not provide any warranties regarding any Third-Party Materials. Any warranty on Third-Party Materials will only be provided by their respective providers. You assume the entire cost of all necessary servicing, repair, or

correction of problems caused by viruses or other harmful components, unless such errors or viruses are the direct result of Our gross negligence or willful misconduct.

The Third-Party Services may vary during the Term if We from time to time choose to remove individual Third-Party Services from the Service, or if suppliers of Third-Party Services discontinue them, discontinue Our access to them or make them available to Us (to the extent we bear costs associated with making them available to You) on terms that We in Our sole discretion deem commercially impracticable.

Accordingly, We do not warrant or guarantee that any or all Third-Party Materials accessible via the Service on the Effective Date will remain accessible to You throughout the Term.

While some components of the Service from time to time may refer to legal obligations, We do not engage in the practice of law in providing the Service or any other advice or service to You. We recommend that You use the Service as part of a risk mitigation practice that includes consulting with qualified attorneys.

The disclaimers in this section apply notwithstanding anything else in this Agreement.

11. LIMITATION OF LIABILITY

Except with respect to either party's confidentiality or indemnification obligations hereunder or damages and damages arising from either party's violation of the other party's Intellectual Property rights, (a) neither party will be liable to the other party or to any third party for any incidental, indirect, punitive, special or consequential damages relating to this Agreement, and (c) each party's total liability for any and all claims relating to this Agreement will not exceed the total amount paid by You during the three months of this Agreement prior to the incident(s) giving rise to the claim(s). We will have no liability to any third party for any losses or damages under any theory of liability. These limitations will apply to all claims for damages, whether based in contract, warranty, strict liability, negligence, tort, or otherwise, and regardless of the person bringing the claim.

This Section 11 is intended to be as inclusive as applicable law permits. Your agreement to this Agreement confirms that You have read it, fully understand it, have had the opportunity to discuss it with legal counsel of Your choice, understand that through it You are giving up substantial rights, and intend to completely and unconditionally release liability to the greatest extent allowed by law.

12. Indemnification

We will indemnify, defend and hold harmless (collectively "**indemnify**" or "**indemnification**") You and Your officers, employees, directors, agents, independent contractors, licensors and suppliers ("**Customer Indemnitees**") from and against any third party claims, demands, actions and proceedings, and any resulting liabilities, damages, costs and expenses (including reasonable legal fees and expenses), brought against any Customer Indemnitees, alleging that the Service infringes any patent, trademark or copyright of any third parties. Such indemnification, however, excludes such claims which arise or result from (1) any use of the Service by You or any other party that violates these Terms; and/or (2) the combination, operation, or use of the Service in connection with a third-party product or service (the combination of which causes the claimed infringement). This indemnification and hold harmless provision will apply during the Term only.

You will promptly notify Us in writing of any action, threat of suit or claim for arbitration that You receive that may qualify for the indemnification provided herein. In such a case, the parties will confer in good faith regarding the

appropriate course of conduct, and We will have sole discretion regarding the disposition and any settlement of the matter.

This indemnification is the sole and exclusive remedy available to You with respect to any third-party Intellectual Property claims against any Customer Indemnitee.

13. Your System Requirements

Some Defendify Products and/or various specific components of some Defendify Products may not function on web browsers other than Google Chrome, Firefox or Internet Explorer, or on operating systems other than Windows, OSW or Linux Ubuntu, or on older-than-current versions of any of the foregoing.

Please contact us if You would like to ensure that Your systems meet our current system requirements.

14. General

14.1. Reservation. Nothing in this Agreement will preclude or limit Our right to market, make available or license any product that We now offer or may in the future offer.

14.2. Nature of Relationship. Each party will act as an independent contractor with respect to this Agreement. This Agreement creates no agency, partnership, joint venture, other joint relationship or fiduciary relationship. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other. We are not an insurer and will not act as an insurer with respect to You, Your Users or any other person.

14.3. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

14.4. Assignment. You may not assign or transfer any of your obligations, licenses or rights under this Agreement without Our prior written consent. We may assign this Agreement without your prior notice or consent.

14.5. Force Majeure. Neither party will be held liable for failure to perform any obligation of or delay in performance resulting from or contributing to any cause beyond that party's reasonable control, including without limitation any act of God, act of civil or military authority, act of war or terrorism, act (including delay, failure to act, or priority) of any governmental authority, power outages, civil disturbance, insurrection or riot, sabotage, fire, severe weather conditions, earthquake, flood, strike, work stoppage or other labor difficulty, embargo, delay in transportation or embargoes. The affected party's obligations will be suspended solely to the extent caused by the force majeure and so long as it lasts, and the time for performance of the affected obligation will be extended by the time of the delay that the force majeure causes.

14.6. Export Regulations. Each party warrants that it will comply in all respects with any export and re-export restrictions imposed by any U.S. or foreign law to the Service. Each party represents that it is not named on any U.S. government denied-party list.

14.7. Successors. This Agreement will bind and inure to the benefit of the parties and their heirs, administrators, successors, and assigns.

14.8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

14.9. Waiver. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

14.10. Entire Agreement. This Agreement is the entire understanding of the parties and supersedes all prior agreements between them concerning its subject matter. Any amendment must be in writing and expressly state that it is amending this Agreement.

14.11. Governing Law. The laws of Delaware, except for conflict of law rules, will apply to any dispute related to the Service or to this Agreement.

14.12. Dispute Resolution. The parties will attempt to settle any dispute or claim by either of them relating to this Agreement by good-faith consultation. If such consultation yields no satisfactory resolution of the dispute or claim, then either party may submit it to arbitration in accordance with the Small Claims Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"). The arbitration will be held, and the award will be rendered, in Maine. The award will be final and binding on the parties as from the date rendered, and will be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the arbitral tribunal. Judgment upon any award may be entered in any court having jurisdiction thereof. In the case of any dispute, the prevailing party will be entitled to recover reasonable attorneys' fees and costs, including expert witness fees, from the other party.

14.13. Time Limitation on Disputes. You must bring any claim, action or proceeding that you may have against Us (or against any of our employees, directors, officers, agents or independent contractors) within one year after the cause of action has accrued or within one year after the termination of this Agreement, whichever is earlier.

14.14. Notices. Notices to Defendify under this Agreement are accepted only when sent by email to legal@defendify.io.

14.15. Survival. The following sections of this Agreement will survive its termination: sections 10 (disclaimers); 11 (limitation of liability); 12 (indemnification); 14.4 (assignment); 14.6 (export regulations); 14.7 (successors); 14.10 (entire agreement); 14.11 (governing law); 14.12 (dispute resolution); 14.13 (time limitation on disputes).