

## **Defendify Partner Agreement (Reseller)**

**Last Updated: August 26, 2022**

This Defendify Partner Agreement (Reseller) ("Agreement") will become a binding agreement between Defendify, Inc., a Delaware corporation ("Defendify," "We" or "Us") and the organization identified in a Quote that incorporates this Agreement ("Partner") (We and Partner together, the "parties"). If and when Partner agrees to a Quote in the manner provided in that Quote, this Agreement will bind the parties and govern Partner's reseller relationship with Defendify as further detailed in the Quote.

If Partner, or Partner Customer (as defined below) purchases Defendify's Managed Detection and Response (MDR, as defined below) Service (formerly known as Breach Detection and Response [BDR, as defined below] Service), Partner and/or Partner Customer, as applicable, agree(s) to and is/are subject to this Agreement, along with the End User License Agreement (EULA) attached hereto as **Exhibit A**, which may be modified from time to time.

This Agreement was last updated on the "Last Updated" date above. The Agreement is effective between Partner and Us as of the date on which Partner accepts the Agreement (the "Effective Date"). This version of the Agreement does not bind any partner that accepted earlier versions of the Agreement unless such partner expressly agrees to this updated Agreement.

## **Recitals**

**A.** Defendify provides cybersecurity prevention services to organizations on a subscription basis through various product plans that include both proprietary Defendify software and products offered by third parties. Defendify provides its services to customers directly, and markets and sells those services both directly as well as through a partner program.

**B.** Partner desires to market and sell Defendify services to potential Defendify customers as a member of the Defendify partner program. Defendify desires to engage Partner for that purpose.

**C.** If Partner purchases the MDR Service for Partner's use, it shall agree to and execute the EULA attached hereto as **Exhibit A**. If Partner Customer purchases the MDR Service, Partner shall ensure Partner Customer agrees to and executes the EULA.

**D.** If Partner purchases the Cybersecurity Service Warranty protection for Partner's use, it is provided by Cysurance, through Defendify, and You agree to and are subject to this Agreement, as well as the terms of the Cysurance Agreement attached hereto as **Exhibit B**.

In consideration of the mutual promises and covenants herein, the parties therefore agree as follows. This Agreement includes the attached terms and conditions and all schedules, exhibits and attachments that reference this Agreement.

## **1. Definitions.**

**"Authorized Defendify Product"** means any Defendify Product that is identified on Schedule 1 to this Agreement as a Defendify Product that Partner is offered to Resell to Prospects and Partner Customers.

**"MDR"** means "Managed Detection and Response," (formerly known as "BDR" meaning "Breach Detection and Response") which is a module available in the Defendify platform that incorporates 24/7 device and network



cybersecurity monitoring, detection response and containment along with reporting and advisory professional services.

**"Customer Agreement"** means an agreement between Defendify and a Partner Customer that authorizes Partner Customer to use any Authorized Defendify Products.

**"Customer Systems"** means any and all hardware, software or other systems that a Customer owns, leases or controls.

**"Defendify Marketing Materials"** means marketing materials created and published by Defendify and made available to Partner for Partner's use in connection with this Agreement.

**"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 Partner or of any third party.

**"Defendify Content"** means information created or written by Defendify and made available through the Service, including (a) licensed software developed by Defendify, (b) the Documentation and (c) information that Defendify will communicate to Partner Customers during the Term through that software, by email and by other means of communication.

**"Defendify Products"** means the suite of products provided by Defendify. "Defendify Products" includes the Defendify Content in those products.

**"Documentation"** means the document(s) that Defendify makes available to Partner and to Partner Customers from time to time that provide instructions for using the Service.

**"EULA"** means End User License Agreement, under which Partner and/or Partner Customer license the MDR Service, which will include the terms set forth in **Exhibit A**, as may be modified from time to time.

**"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.

**"Brand Standards and Partner Marketing Guide"** means the document or documents published by Defendify, as Defendify may from time to time update it, identifying standards and policies with which must Partner's marketing activities and materials must comply.

**"Original Partner Marketing Materials"** means marketing materials created and published by Partner for Partner's use in connection with this Agreement.

**"Partner Customer"** means any company or organization that Partner has caused to enter into a Customer Agreement.

**"Partner Data"** means electronic data and information submitted by or for Partner or any of Partner's employees to the Service.

**"Partner Systems"** means any and all hardware, software or other systems that Partner owns, leases or controls.

**"Personnel"** means a party's employees and/or independent contractors, to the extent that this Agreement authorizes a party to use independent contractors in performing its obligations under this Agreement.

**"Prospect"** means a customer or organization to which Partner seeks to Resell Authorized Defendify Products.

**"Quote"** means a written document setting forth Defendify services to be resold by Partner and expressly incorporating this Agreement.

**"Resale Transactions"** means a transaction meeting the criteria stated in Section 4.3. The "Service" means any and all Authorized Defendify Products.

**"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 Defendify makes 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 such third parties in connection with Defendify Products; or (b) required by Defendify to be obtained by Partner Customers in order for Partner Customers to use Defendify Products.

**"User"** means an individual who is authorized by a Partner Customer to use the Service.

## 2. Partner Relationship

During the Term of this Agreement, Partner:

**2.1.** Will use reasonable efforts to market and resell any or all Authorized Defendify Products that Partner wishes to resell to Prospects and/or Partner Customers, to the extent that each of the foregoing is not already a Defendify customer or engaged in independent discussions with Defendify to become a Defendify customer (collectively, the foregoing services are referred to here as "Resale" and to resell them is to "Resell"). Partner will limit its Resale activities to those companies and organizations that Schedule 1 defines as Authorized Defendify Products and which fall within the Resale Markets defined in Schedule 1. Partner may, in its sole discretion, Resell the Authorized Defendify Products in conjunction with other products or services that Partner sells, Resells, licenses or re-licenses.

**2.2.** In connection with Resale, may in its sole discretion use (a) any or all Defendify Marketing Materials and (b) any Original Partner Marketing Materials that Defendify has previously approved in writing, subject to any terms that Defendify may impose on those materials' use.

**2.3.** In connection with all Resale Transactions including MDR Services, will coordinate and require Partner Customers to agree to the EULA attached hereto as **Exhibit A**, which may be modified from time to time.

**2.4.** In connection with all Resale Transactions including the third-party Cybersecurity Service Warranty, Cysurance, will coordinate and require Partner Customers to agree to the terms of the Cysurance Agreement attached hereto as **Exhibit B**.

**2.5.** Will provide liaison, where necessary, between Defendify and Prospects in connection with Resale, including without limitation coordinating product demonstrations for Prospects.

**2.6.** May Resell the Authorized Defendify Products at any prices that Partner in its sole discretion seems appropriate, subject to any pricing terms or guidelines that may be defined in Schedule 1 as "Pricing Terms").

**2.7.** Will pay Defendify the Fees specified in the Quote.

### 3. Marketing

**3.1.** During the Term, Defendify will make Defendify Marketing Materials available to Partner via a secure online Partner portal ("Portal") that Defendify will maintain or by other means, and Defendify may, in its sole discretion, update, remove, discontinue or create new Defendify Marketing Materials. Defendify will have sole responsibility for determining the content and design of the Defendify Marketing Materials.

**3.2.** Partner may submit any proposed Original Partner Marketing Materials to Defendify for approval at any time during the Term, and Defendify will not withhold such approval unreasonably. Partner will ensure that any Original Partner Marketing Materials comply with Section 5 of this Agreement and any other written guidelines that Defendify may communicate to Partner.

### 4. Resale and Onboarding

**4.1.** During the Term, the parties will record in the Portal various documents, data and information regarding Partner's Resale activities ("Partner Portal Data"). It is Partner's sole responsibility, as between the parties, to ensure that Partner Portal Data are always accurate and updated in a timely manner.

**4.2.** Promptly after Partner's first communication with a Prospect, Partner will record in the Portal the name of the Prospect and any other information required by the Portal. Defendify at all times during the Term will retain the right to determine which Prospects may use the Authorized Defendify Products. Accordingly, at any time after Partner records a Prospect in the Portal, Defendify may notify Partner via the Portal or any other means that Defendify will decline to allow that Prospect to be a Defendify customer, for any reason in Defendify's sole discretion. In such a case, Partner will immediately cease Resale efforts to that Prospect.

**4.3.** Partner will "close" a Resale by completing the Defendify Customer Activation form via the Defendify application, followed by a Partner Customer logging in to the Defendify application and agreeing to a Customer Agreement with Defendify. If a Resale includes MDR Services, Partner shall also cause Partner Customer to agree to the EULA attached hereto as **Exhibit A**. Each instance of a Prospect doing all of the foregoing will be deemed a "Resale Transaction."

**4.4.** Partner acknowledges that during the Term Defendify will engage in its own direct sales efforts to potential customers and may enter into partnership agreements with organizations other than Partner to resell Defendify Products. At any given time during the Term, either Defendify or other Defendify partners may independently be making efforts to sell or resell Defendify Products to the same organizations that Partner is pursuing as Prospects.

**4.5.** Partner will have sole responsibility, as between the parties, for onboarding Partner Customers, training Partner Customers in usage of the Authorized Defendify Products, and customer service regarding Authorized Defendify Products. Except for providing the Documentation and as otherwise expressly provided herein, Defendify will not provide training, onboarding or other customer services to Partner, Prospects, Partner Customers or to any other third party.

### 5. Partner's Representations and Warranties

Partner represents and warrants that at all times during the Term it will, and will ensure that all of its Personnel will:

- 5.1.** Not use the Service in a manner inconsistent with this Agreement, with the Documentation or with any applicable laws;
- 5.2.** Not make any promises, representations or warranties of any type to any Partner Customer, Prospect or any other person or organization relating to Defendify or any Defendify Product that are less favorable to Defendify than the warranties expressly set forth in this Agreement;
- 5.3.** Not remove any Defendify Marks from any Defendify Content;
- 5.4.** Not grant or transfer any licenses or sublicenses concerning the Service, Defendify Content, beyond or differing from the licenses expressly set forth in this Agreement.
- 5.5.** Not sell, resell, license, sublicense, distribute, rent or lease any part of the Service or any Defendify Content except as this Agreement authorizes, disclose any of the foregoing to a third party or allow a third party to access any part of the Service with or without compensation;
- 5.6.** Comply with the Brand Standards and Partner Marketing Guide as Defendify may update it from time to time; and
- 5.7.** Comply with any Terms of Use or other agreements that apply to Third-Party Services, including the EULA as applicable.

## 6. Intellectual Property

**6.1.** Subject to this Agreement and conditioned on Partner's compliance with it, Defendify hereby grants Partner a non-exclusive, fully paid-up, limited, non-transferable (except as stated in Section 6.2) license to use the Service, the Defendify Marks and the Defendify Marketing Materials in the region(s) identified in Schedule 1, only for the Permitted Uses during the Term. The license in this section extends to any and all of Partner's subsidiaries, parent and sister companies and all Personnel of each.

**6.2.** The "Permitted Uses" means (a) copying, performing, displaying, modifying, distributing and transmitting the Service to the extent necessary for Partner to assist Partner Customers from time to time with requests by Partner Customers for Partner's assistance in using the Service; and (b) copying, performing, displaying, modifying, distributing and transmitting the Defendify Marks and Defendify Marketing Materials to the extent necessary for Partner to comply with its marketing obligations under this Agreement. For the avoidance of doubt, the Permitted Uses exclude the conduct set forth in Section 6.3 below ("Usage Restrictions").

Partner will not do or attempt to do any of the following: (a) use the Service to store, use or transmit material in violation of third-party privacy or Intellectual Property rights; (b) 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 Defendify owns, leases or controls; (c) interfere with or disrupt the Service's integrity or performance; (d) gain unauthorized access to the Service; (d) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit, or access or use any of Defendify's Intellectual Property except as this Agreement allows; (e) frame or mirror any part of the Service, other than framing on Partner's own intranets or as the Documentation may permit; (f) remove or modify any attributions, proprietary marks or notices that Defendify may include in the Service, including Defendify Marks or any other attributions, property marks or notices of Third-Party Services or relating to Third-Party Materials; or (g) disassemble, reverse engineer, or decompile any part of the Service, 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.

**6.3.** Subject to this Agreement and conditioned on Defendify's compliance with it, Partner hereby grants Defendify a non-exclusive, fully paid-up, limited, non-transferable license to copy, perform, display, modify and store all Partner Portal Data during the Term and indefinitely thereafter for the purposes set forth in this Agreement.

**6.4.** 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 Defendify or to the Third-Party Service that owns such Intellectual Property. Partner will have no rights in the Service except as this Agreement expressly grants.

## 7. Suspension or Modification of the Service

**7.1.** Defendify may suspend, terminate, withdraw, or discontinue the Service as to Partner and/or any Partner Customer where required by law (including without limitation where requested by a subpoena or court order) or as this Agreement otherwise permits.

**7.2.** Defendify may modify the Service at any time during the Term, with or without prior notice to Partner and/or to Partner Customers, and Defendify will not be liable to Partner, to any Partner Customer or to any other third party for any such modification. It may be necessary for Defendify 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 result in a partial or complete outage of the Service. Defendify 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.

## 8. Term and Termination

**8.1.** The Term of this Agreement begins on the date Partner agrees to the Quote in the manner set forth in that Quote ("Effective Date") and terminates one year later (the "Initial Term") unless terminated earlier or renewed as described here. This Agreement will automatically renew for successive one-year periods ("Renewal Terms") after the Initial Term's end. The "Term" means the Initial Term and all Renewal Terms together.

**8.2.** Either party may terminate this Agreement (a) immediately by written notice to the other party if that other party has failed to cure any material breach of this Agreement within 30 days after receiving notice of such breach from the first party; (b) immediately by written notice to the other party if that other party becomes insolvent, is liquidated or dissolved or if any proceedings are commenced by, for or against that other party under any bankruptcy, insolvency, reorganization of debts or debtors relief law, or law providing for the appointment of a receiver or trustee in bankruptcy; or (c) on 90 days' written notice to the other party without cause.

**8.3.** In addition to its rights under Sections 8.2 and 9.2, Defendify may terminate this Agreement immediately by written notice to Partner if Partner has breached any payment obligation under this Agreement for 30 or more days.

**8.4.** After termination of this Agreement for any reason, Partner Portal Data will remain accessible to Partner via the Portal for 30 days and Partner may copy the Partner Portal Data for its own purposes. Thereafter, Defendify will remove Partner's access to the Partner Portal Data and retain a permanent right and license to use the Partner Portal Data in any manner that Defendify deems appropriate;

**8.4.1.** within 30 days, Partner will destroy any Confidential Information that it has received from Defendify (excepting Partner Portal & Application Data that Defendify may retain; and

**8.4.2.** For 6 months, (a) Partner may continue to Resell any of the Authorized Defendify Products to any Partner Customer that has already entered into a Customer Agreement that includes Defendify Products and that is in effect at the time of this Agreement's termination and (b) Defendify will not solicit any such Partner Customer to terminate any agreement between that Partner Customer and Partner. This Section 8.4.2 does not limit other Defendify Partners from soliciting or reselling Defendify products to Partner Customers.

## 9. Compensation

**9.1.** Partner Customers will pay all fees relating to their usage of Authorized Defendify Product directly to Partner rather than to Defendify. During the Term, within 7 calendar days after it records a Resale Transaction in the Portal, Partner will send to their assigned Defendify representative by Customer Activation Form via the portal an order relating to that Resale Transaction. Such order will indicate the pricing terms of the Resale Transaction and any other information that Defendify may reasonably request. At any time after Partner records a Resale Transaction in the Portal, Defendify may send Partner an invoice for the Commission specified in Schedule 1.

**9.2.** Partner will pay Defendify any invoice on the due date stated in the invoice. Defendify may charge Partner interest on any past due amount at 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate allowed by law.

**9.3.** All Fees paid by Partner to Defendify are nonrefundable. Partner's obligations to pay Defendify fees relating to Partner Customers will continue indefinitely after the termination of this Agreement for any reason.

**9.4.** Each party will be responsible for any taxes properly levied on that party by virtue of its undertakings hereunder.

## 10. Mutual 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.

## 11. DISCLAIMERS

The Service is provided "as is" without warranty of any kind. Defendify disclaims all warranties to Partner, to each and every Partner Customer and to any other 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, and any warranties or conditions arising out of course of dealing or usage of trade. Further, Defendify disclaims any warranty that the Service will be uninterrupted, error-free, virus-free, or secure, or that Partner Systems or any Customer Systems will be protected from every form of attack.

Cybercrime is a continually growing and changing risk. Defendify cannot control the behavior and actions of Customers or Customers' Users, either of which could permit or cause cybercrimes against Customers, Customer's Users and/or Customer Systems.

Defendify does not provide any warranties regarding any Third-Party Materials. Any warranty on Third-Party Materials will only be provided by its respective provider.

The Third-Party Services may vary during the Term if Defendify from time to time chooses to remove individual Third-Party Services from the Service, or if suppliers of Third-Party Services discontinue them, discontinue Defendify's access to them or makes them available to Defendify (to the extent Defendify bears costs associated with making



them available to Partner or to Partner Customers) on terms that Defendify in its sole discretion deems commercially impracticable. Accordingly, Defendify does not warrant or guarantee that any or all Third-Party Materials accessible via the Service at the time of execution of this Agreement will remain accessible to Partner or to any Partner Customer throughout the Term.

The disclaimers in this Section 11 apply except where this Agreement otherwise expressly provides and except as required by law.

## 12. LIMITATION OF LIABILITY

Except with respect to either party's confidentiality or indemnification obligations hereunder or 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 \$5,000. Defendify 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 12 ("Liability") is intended to be as inclusive as Delaware law and any other applicable law permit.

## 13. Indemnification

**13.1. Defendify's Indemnification of Partner.** Defendify will indemnify, defend and hold harmless (collectively "indemnify" or "indemnification") Partner and Partner's officers, directors, agents and Personnel ("Partner 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 Partner Indemnitees, alleging that any Authorized Defendify Product or any Defendify Marketing Materials infringes any Intellectual Property rights of any third party. Such indemnification, however, excludes such claims which arise or result from any use of any Authorized Defendify Product or Defendify Marketing Materials by Partner or any other party that violates this Agreement.

Partner will promptly notify Defendify in writing of any action, threat of suit or claim for arbitration that Partner receives 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 Defendify will have sole discretion regarding the disposition and any settlement of the matter.

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

**13.2. Partner's Indemnification of Defendify.** Partner will indemnify Defendify and Defendify's officers, directors, agents and Personnel ("Defendify 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 Defendify Indemnitees, relating to any use of the Service by Partner or by a Partner Customer or Prospect that violates or is unauthorized by this Agreement.

Defendify will promptly notify Partner in writing of any action, threat of suit or claim for arbitration that Defendify receives 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 Partner will have sole discretion regarding the disposition and any settlement of the matter.

This indemnification is the sole and exclusive remedy available to Partner with respect to any third-party Intellectual Property claims against any Partner Indemnatee

## 14. Protection of Partner Data

Defendify will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Partner Data. Defendify will not disclose Partner Data to any third party or use it for any other purpose not necessary for Defendify to provide the Service or not permitted by Defendify's Privacy Policy. Defendify will restrict access to Partner Data to our employees and independent contractors who require access in order to perform hereunder. Defendify's obligations under this section will not apply to the extent that any Partner Data is (a) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of Defendify, (b) subsequently disclosed to Defendify on a non-confidential basis by a third party not having a confidential relationship with Partner that rightfully acquired such information, (c) communicated by Defendify to a third party with Partner's prior written consent, or (d) disclosed by Defendify pursuant to a subpoena, court order or request by law enforcement or otherwise required by law.

## 15. General Provisions

**15.1. Reservation.** Nothing in this Agreement will preclude or limit Defendify's right to market, make available or license any product that it now offers or may offer in the future offer.

**15.2. Nature of Relationship.** Each party will act as an independent contractor with respect to this Agreement, and employees of one party will not be considered to be employees of the other. The term "Partner" as used in this Agreement (and from time to time in other documents written by either party to this Agreement) is a term used for convenience and does not create a "partnership" within the meaning of the law of any jurisdiction. 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. Defendify is not an insurer and will not act as an insurer with respect to Partner, any Partner Customer, any Partner Customer or any employee or independent contractor of any Partner Customer or any other person.

**15.3. Future Functionality.** Partner agrees that its entry into this Agreement is not contingent on any Defendify Product's future functionality or features, or dependent on any oral or written public comments made by Defendify regarding future functionality or features.

**15.4. No Third-Party Beneficiaries.** This Agreement creates no third-party beneficiaries.

**15.5. Assignment.** Partner may not assign or transfer any of its obligations, licenses or rights under this Agreement without Defendify's prior written consent.

**15.6. 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, epidemic, pandemic, quarantine, 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.

**15.7. 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.

**15.8. Agreement Binding on Successors.** This Agreement will bind and inure to the benefit of the parties and their heirs, administrators, successors, and assigns.

**15.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be 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.

**15.10. 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.

**15.11. 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.

**15.12. 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.

**15.13. 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 to this Agreement will be entitled to recover reasonable attorneys' fees and costs, including expert witness fees, from the other party.

**15.14. Time Limitation on Disputes.** Partner must bring any claim, action or proceeding that Partner may have against Defendify (or against any of Defendify's 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.

**15.15. Notices.** Notices to Defendify under this Agreement are accepted only when sent by email to [legal@defendify.com](mailto:legal@defendify.com).

**15.16. Publicity.** Defendify may publicize the fact that the parties have entered into this Agreement, including identifying Partner by name and a general description of the nature of the Agreement that does not disclose any confidential information protected by any non-disclosure agreement that the parties may have entered into, without

separate prior written consent by Partner. Such publicity may include the issuance of press releases, disclosures on a party's website or any other marketing efforts.

**15.17. Survival.** The following sections of this Agreement will survive its termination: 6.4 (Partner's license to Defendify); 8.4 (post-termination provisions); 9.3 (Partner's payment obligations); 11 (disclaimers); 12 (limitation of liability); 13 (indemnification); 15.5 (assignment); 15.7 (export regulations); (successors); 15.11 (entire agreement); 15.12 (governing law); 15.13 (dispute resolution); 15.4 (time limitation on disputes); 15.16 (publicity) and Schedule 1, Section 7.

## **Defendify Partner Agreement (Reseller) – Schedule 1**

This Schedule 1, including any schedules hereto, is incorporated into the Defendify Partner Agreement between Partner and Defendify ("**Agreement**"). All capitalized terms used but not defined here have the meanings given in the Agreement.

**1. Authorized Defendify Products:** All Defendify products listed in Partner Prices.

**2. Resale Markets:** North America.

**3. Customer Pricing Terms:** Partner may Resell the Authorized Defendify Products to Partner Customers at any prices that Partner in its sole discretion deems appropriate.

**4. Defendify Partner Pricing:** Partner Prices for each Authorized Defendify Product (and for their various component services) are in effect as of the Effective Date (such prices, the "**Partner Prices**"). During the Initial Term and each Renewal Term, Partner will pay Defendify the Partner Prices.

### **5. Changes to Partner Prices**

**5.1.** At three-month intervals, beginning three months after the Effective Date and continuing thereafter throughout the Term, the Partner Prices may change as Section 5.3 provides.

**5.2.** At annual intervals, beginning at the start of the first Renewal Term and recurring on the first day of each successive Renewal Terms, the Partner Prices may change as Section 5.3 provides.

**5.3.** Defendify will give notice to Partner of any change in Partner Prices at least 30 days before such new prices take effect. Such notice may be by email, by updating the Portal or by any other written means agreed by the parties, and will contain the date on which the change will occur (the "**Change Date**"). If Partner does not then notify Defendify of Partner's intention to terminate this Agreement at least 14 days before the Adjustment Date, Partner will be deemed to have agreed to the changed prices and this Agreement will be deemed modified to reflect such changed prices.

**6. 30 Day Money Back Guarantee.** For a period of 30 days from start of initial term, if unsatisfied Partner may cancel the agreement with Defendify and receive their first month payment in a refund. This refund is limited to the monthly fee outlined on the partner Quote. This must be requested in writing to the assigned Defendify Success Manager in order for the refund to be processed.

## **EXHIBIT A**

### **EULA Terms**

**1. Licensed Software.** The software to which the recipient ("End User") is being granted access ("Licensed Software") is the proprietary technology of Defendify's licensor ("Licensor") and is being made available to End User pursuant and subject to the terms of, first, this End User License Agreement ("EULA"), and second, of End User's agreement with Defendify ("Customer Agreement"); provided that in the event of a conflict between this EULA and the Customer Agreement, this EULA shall control. The Licensor is an express third party beneficiary of this EULA and may enforce it against End User directly. The duration and pricing of End User's access to the Licensed Software will be governed by the Customer Agreement, other than Licensor's termination rights under this EULA. Licensor hereby grants End User a limited, personal, term-limited, royalty-free and paid up, non-sublicensable, non-transferable (other than as a result of change of control of End User), revocable, nonexclusive license to: (i) download and install the Licensed Software, only on the endpoint devices that are covered by the Managed Detection and Response (MDR) Services purchased under the Customer Agreement, and (ii) to use other Licensed Software that Licensor may make available to End User hereunder, in each of (i) and (ii) only for End User's internal use in connection with its receipt of MDR Services. End User shall not, nor permit anyone else to: copy, modify, or distribute the Licensed Software; reverse engineer, disassemble, decompile or attempt to discover the source code of the Licensed Software (except to the extent that the foregoing is expressly permitted by applicable local law), or perform benchmarking or similar tests on the Licensed Software; rent, lease, or use the Licensed Software on behalf of any third party; or use the Licensed Software for any other purpose. As between the parties to this EULA, title, ownership rights, and intellectual property rights in and to the Licensed Software, and any copies or portions thereof, shall remain in Licensor and its suppliers or licensors. This EULA does not grant End User any rights not expressly granted herein. End User is responsible for all actions or omissions of its agents or personnel with respect to their use of the Licensed Software. If End User is part of an agency, department, or other entity of any national government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Licensed Software is restricted in accordance with the relevant national acquisition regulations as applied to civilian agencies. With respect to Government sales in the United States, the Licensed Software is a "commercial item," "commercial computer software" and "commercial computer software documentation" as those terms are defined at 48 C.F.R. 2.101 and 48 C.F.R. § 227.7202. Any use, duplication, or disclosure by the United States federal government is subject to the restrictions applicable to commercial computer software, commercial computer software documentation and commercial items generally in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. For purposes of use, duplication, or disclosure by the United States federal government, the author of the Licensed Software is the Licensor. End User shall comply with all applicable export laws and restrictions and regulations, and End User shall not export, or allow the export or re-export of the Licensed Software or any related technical information in violation of any such restrictions, laws or regulations. End User agrees to the foregoing and represents and warrants that End User is not located in, under the control of, or a national or resident of any country with respect to which the delivery or license of the Licensed Software would be restricted under applicable law. The foregoing licenses and restrictions apply to any Licensed Software delivered before or after the date this EULA is accepted by End User ("Effective Date"). The Licensed Software is a confidential trade secret of Licensor and shall not disclosed or (other than as permitted under this EULA) used by End User.

**2. End User Data.** End User hereby grants Licensor a perpetual, irrevocable, royalty-free and paid up, sublicensable, transferable, non-exclusive license to collect and use End User Data to provide the MDR Services, and to develop, maintain and improve the MDR Services and other products and services of Licensor and of its affiliates. "End User Data" means data regarding End User's use of the Licensed Software and receipt of the MDR Services (including without limitation reports produced by Licensor for End User), and all feedback provided by or on behalf of End User regarding the Licensed Software or the MDR Services. End User represents, warrants and covenants to secure all

third-party consents as may be required for the foregoing license grants to Licensor. The foregoing licenses apply to any End User Data collected or delivered before or after the Effective Date.

**3. End User Obligations.** End User shall designate one individual to communicate directly with Licensor on the End User's behalf and to whom all Licensor communications concerning the Agreement may be addressed (such individual will be known as the "End User Contact"). End User shall cooperate with Licensor, including by making available management decisions, information, approvals and acceptances, as reasonably requested by Licensor to the extent required to permit Licensor to fulfill its obligations and responsibilities hereunder. The End User Contact or his or her designate will be the principal point of contact for obtaining such decisions, information, approvals and acceptances. Only personnel as expressly so designated by the End User Contact will be authorized to make commitments on the part of End User that would amend the Agreement. End User shall, to the extent it is able, provide reasonable notice to Licensor of anticipated material changes that could increase, decrease, or otherwise impact the resources needed to permit Licensor to provide the MDR Services. If End User is unable to provide reasonable notice of such material changes, then the Parties shall mutually determine the impact of such material changes on the MDR Services, and mutually agree upon such adjustments as may be appropriate. End User shall install the Licensed Software on its own servers protected by industry standard administrative, technical and physical security procedures and policies to protect the Licensed Software from unauthorized access, use or disclosure.

**4. Termination.** Licensor may terminate this EULA, effective immediately upon written notice to Defendify, if (a) End User breaches any provision in Section 1 (Licensed Software), or (b) End User breaches any other provision of this EULA and does not cure the breach within fifteen (15) days after receiving written notice thereof from Licensor.

**5. Warranty Disclaimer.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE MDR SERVICES AND LICENSED SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS, AND END USER USES EACH OF THE FOREGOING AT END USER'S SOLE RISK. LICENSOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY OTHER WARRANTY ARISING UNDER USAGE OF TRADE, COURSE OF CONDUCT OR OTHERWISE REGARDING THE MDR SERVICES AND LICENSED SOFTWARE. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY THAT THE LICENSED SOFTWARE WILL OPERATE ON A SECURE OR ERROR-FREE BASIS, OR THAT THE MDR SERVICES WILL DETECT ALL THREATS, OR PRESERVE END USER DATA.

**6. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL LICENSOR OR ITS SUPPLIERS AND LICENSORS BE LIABLE TO END USER OR ANY OTHER PERSON (I) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, OR (II) FOR AGGREGATE DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF THIS EULA, USE OF THE LICENSED SOFTWARE, OR RECEIPT OF THE MDR SERVICES, IN EXCESS OF THE FEES PAID BY END USER TO LICENSOR IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM AROSE, REGARDLESS OF THE NUMBER OF CLAIMS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

## **EXHIBIT B**

### **Cybersecurity Service Warranty**

This Exhibit B is a part of the Master Services Agreement (the "Agreement"). Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

**1. Program.** Defendify hereby provides You with the 360 Degree Protection Program (the "Program") provided by Cysurance, LLC, a Delaware corporation with offices located at 3123 Riva Rd. Unit 161 Riva, MD 21140 ("Cysurance"). In order to receive the benefits of the Program You (the "Participant") are required to accept the terms and conditions and complete certain enrollment requirements that shall be presented to you through the Cysurance enrollment portal (the "Cysurance Terms").

**2. Coverage.** Subject to the Agreement, this Exhibit B, and the Cysurance Terms, if during the Term, You submit a valid claim by notifying Cysurance at [claims@cysurance.com](mailto:claims@cysurance.com) that one of the following events has occurred (collectively, an "Event"):

- a. cyber ransom attack ("Ransom Event");
- b. a business email compromise (BEC) that results in funds transfer or invoice fraud ("BEC Event");
- c. a cyber breach that triggers HIPAA, PCI, OSHA, and/or state related violations including, but not limited to data loss, sanctioned non-compliance penalty or fine, or other related expenses ("Compliance Event");
- d. a suit arising out of a breach of privacy and/or security related to a cyberattack, loss or misuse of data, or media peril related to content on a Participant's website where legal defense expenses and settlement costs are incurred ("Cyber Legal Liability Event"); and/or
- e. a security breach, meaning the malicious, intentional and willful misuse of a Participant's computer system to deny legitimate users' access to their network that results in the loss of business income (net profit or loss before income taxes) which would have been earned or incurred had no loss occurred, and/or any reasonable, continuing, and normal operating expenses that were affected by the security breach, as calculated in the reasonable discretion of Cysurance ("Business Income Event").

and provided an exclusion set forth in Section 3 below does not apply, Cysurance will support the repair of the damage resulting from the Event, including, but not limited to, removing and remediating those elements that caused the Event as further specified in this Exhibit B and the Cysurance Terms, subject to the following:

- a. Participant must report the Event within 48 hours of discovery of the Event;
- b. Participant may make one (1) claim during the Term;
- c. Participant must have a commercially reasonable belief that damages resulting from the Event will exceed \$5,000; and
- d. The maximum benefit amounts and any additional terms and conditions applicable to such Events are specified in the Program Confirmation Summary attached hereto as **Schedule 1**.

**3. Not Covered.** Subject to the Cysurance Terms, Cysurance may restrict Recovery Services based on local and regulatory data protection laws. Cysurance will not provide Recovery Services if any one or more of the following conditions occur specific to the nature of the loss:



- a. If Participant fails to take commercially reasonable measures to undertake preventative maintenance, including patching that is up to date per the software manufacturer's release cycle;
- b. Participant has not subscribed to the Defendify System/Service for the portion of the Participant's environment in which the Event occurred;
- c. The Participant's contract with Defendify for the Covered Software System/Service has terminated or expired.
- d. If proof of the failure is not or cannot be verified through log/event data;
- e. If there is a systemic failure of the Defendify's infrastructure that results in a ransom compromise to Defendify's Software System/Service;
- f. If a Participant is regulated under HIPAA/PCI/SEC:
  - I. Participant has not completed an annual risk assessment and documented risks;
  - II. PHI Inventory has not been fully completed and accounted for prior to an incident and claim; and
  - III. Subject to Participant's standard historical employment practices related to HIPAA training for new employees, all of Participant's employees have not completed HIPAA training within the 12 months prior to any incident and claim;
- g. Participant has not adopted and adhered to all privacy and security policies related to the state and/or other federal regulatory requirements to which Participant is subject prior to any Event.
- h. Participant does not provide Cysurance with Service Data deemed to be sufficient by Cysurance to support the damages incurred as a result of the Event, such determination to be made in Cysurance's reasonable discretion, within fifteen (15) days after discovery of the Event; otherwise this will be treated as an invalid Event that is ineligible for Recovery Services.

**4. Recovery Services.** Provided You are in compliance with the terms of the Agreement and this Exhibit B, Cysurance will provide funds or services to remediate and/or replace any aspect of the Participant's environment in which the Event occurred, including, but not limited to, a ransom attack, business email compromise, data breaches, physical tampering, participant downtime, or other related costs specified in the Cybersecurity Service Warranty Confirmation Summary attached hereto as Schedule 1. Participant must provide Cysurance with Service Data deemed to be sufficient by Cysurance to support the damages incurred as a result of the Event, such determination to be made in Cysurance's reasonable discretion, within fifteen (15) days after discovery of the Event; otherwise the Event will be treated as an invalid Event that is ineligible for Recovery Services pursuant to the terms of this Exhibit B.

**5. Third Party Provider.** You understand and agree that the Program is provided exclusively by Cysurance and not by Defendify and that Defendify has no obligation to provide the services under the Program.

**6. Indemnification.** Subject to the terms and conditions set forth in the Agreement, You shall indemnify, hold harmless, and defend Defendify and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party (collectively, "Losses"), arising out of or related to any third-party claim arising out of or related to the Program.

**7. Representations and Warranties.** Defendify makes no representations and/or warranties of any kind related to or in connection with the Program.

**8. Limitation of Liability.** Defendify will be not liable to You or to any third party for any direct, incidental, indirect, punitive, special or consequential damages relating to the Program. 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.

### Schedule 1

#### **Cybersecurity Service Warranty Confirmation Summary**

Subject to all of the Cysurance Terms, including any terms specified on **Exhibit B** to which this Schedule 1 is attached, the Program provides the following coverage limitations:

<b>Program Service Coverage - \$1,000,000 level</b>	<b>Per Claim</b>	<b>Per Participant</b>
Compliance Event	A Maximum of \$200,000 USD	\$200,000 USD
Ransom Event & BEC Event	A Maximum of \$200,000 USD	\$200,000 USD
Cyber Legal Liability Event *	A Maximum of \$500,000 USD	\$500,000 USD
Business Income Event	A Maximum of \$100,000 USD  (There is a \$2,500 USD per-claim deductible that applies to this Event)	\$100,000 USD

\* Participant must first exhaust any other service guarantee that would apply to these expenses.