

Services: Terms and Conditions

Last updated: 05/20/2021

1 Terms and Conditions

- 1.1 These terms and conditions, together with the Customer Information, Selected Options and Relevant Pricing, form the Contract between the Supplier and Customer. The Contract is made on Registration.
- 1.2 Customer accepts the terms and conditions that apply at the time of Registration. Supplier may amend or replace these terms and conditions at any time. All such changes will be emailed to our clients if material changes are made to the terms and conditions. The Customer's use and/or continued use of the Service confirms the Customer's acceptance to be bound by the latest terms and conditions. Any additional or different terms that the Customer may stipulate or state in any communication with the Supplier will not be binding on the Supplier or included in the Contract unless expressly agreed upon in writing by the Supplier.
- 1.3 Each capitalized term used in these terms and conditions has the meaning given to that term in clause 17 of these terms and conditions.

2 Charges and Payment

- 2.1 The Customer will pay the Relevant Pricing for the Service in accordance with the applicable timing for payment of the Selected Options. All payments must be made in full using the payment methods on the Website, without deduction or set-off.
- 2.2 The Relevant Pricing includes all applicable taxes including value added taxes (as applicable).
- 2.3 If any amount is not paid by the due date, the Supplier may suspend provision of all or any of the Service until the Supplier receives payment in full of all outstanding amounts.
- 2.4 The Relevant Pricing may be changed by the Supplier on the Supplier giving at least 90 days written notice (by email) to the Customer of the new charges that will apply.

3 Term

- 3.1 Subject to clause 3.2, the Contract will commence on the Commencement Date and may be terminated by the Customer at any time on written notice to the Supplier (or through the cancellation processes on the Website where applicable) with the termination taking effect at the end of the month in which the Supplier confirms receipt of the Customer's cancellation request.
- 3.2 Where a fixed term applies for the Selected Options, the fixed term Service will be provided for that term. Otherwise, early termination is available provided at least 30 days written notice (by email).

4 **Provision of Service**

4.1 The Supplier will supply the Service in accordance with the Contract.

4.2 The Customer acknowledges that:

- (a) the Supplier is reselling the Service as supplied by the Vendor and as such the Service is limited as described in the relevant Selected Options;
- (b) nothing in these terms and conditions commits the Supplier to provide any service that is not specifically stated in the Selected Options as being included;
- (c) the Service is provided to the Customer on a non-exclusive basis and the Customer's right to use the Service is not transferable.

4.3 Where applicable, the Supplier will provide log on details to the Customer to enable the Customer to access and use the Service.

4.4 If the Selected Options include phone and/or email support:

- (a) the phone and email support is limited as described on the Website.

4.5 The Customer must not, nor may the Customer permit any other person to do any of the following, or attempt to do so:

- (a) copy, alter, modify, reverse assemble, reverse compile, reverse engineer or enhance the Systems; or
- (b) permit or enable users other than the Permitted Users to access or use the Service; or
- (c) provide the Service to any users through operation of a bureau or like service; or
- (d) resell, rent, lease, transfer, sublicense or otherwise transfer rights to use the Service; or
- (e) use the Service in any way that could damage or interfere with the Systems in any way;
- (f) use the Service otherwise than in the manner in which the Service is designed to be used;
- (g) use the Service in any way (whether by transmitting or inputting any files or other material or otherwise) that could interrupt, damage or otherwise interfere with use of the Service by any other customers;
- (h) do any act which would or might invalidate or be inconsistent with the Supplier's Intellectual Property rights.

4.6 The Customer must notify the Supplier of any actual, threatened or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Service infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer must (at the Supplier's expense) do all such things as may reasonably be required by the Supplier to assist the Supplier in pursuing or defending any proceedings in relation to any such infringement or claim.

4.7 The availability of the Service is dependent on factors outside of the Supplier's control including without limitation supply of the Service by the Vendor and the availability of hosting environments and telecommunications networks and as such the Supplier cannot and does not warrant that the Service will be continuously available or available without interruption.

4.8 The Supplier will use reasonable efforts to notify the Customer:

- (a) if the Vendor notifies the Supplier of planned or emergency maintenance in connection with the Service; or
- (b) if unplanned outages occur, following this coming to the Supplier's attention.

5 **Customer Data**

5.1 The Customer warrants that the Customer has all requisite rights and authority in respect of the Customer Data for the Customer's use of the Service as contemplated by the Contract.

5.2 The Customer is responsible for:

- (a) all Customer Data upload and migration requirements (if applicable); and
- (b) except as expressly provided otherwise in the Contract, for all aspects of the Customer's access and use of the Service; and
- (c) ensuring that, in using the Service, it complies with all applicable laws. The Supplier accepts no responsibility for ensuring that use of the Service will result in the Customer complying with applicable laws or enable the Customer to comply with applicable laws (including for example and without limitation, laws requiring records to be stored in a particular jurisdiction).

5.3 Nothing in the Contract transfers ownership of the Customer Data to the Supplier.

6 **Intellectual Property**

6.1 All Intellectual Property in the Service is the property of the Vendor or its licensors and nothing in the Contract operates to change that ownership.

6.2 All Intellectual Property in:

- (a) the Website; and
- (b) the software, processes, methodology and know-how used by the Supplier in its performance of the Contract (without limiting clause 6.1);

is the property of the Supplier (or its licensors including the Vendor) and nothing in the Contract operates to change that ownership.

7 **Personal Data and Data Protection**

7.1 The Customer acknowledges that Personal Data will or may be Processed by the Vendor and consents to that Processing subject to the Supplier taking reasonable steps to ensure that the Vendor agrees to Process Personal Data in accordance with applicable Data Protection Laws. Before providing Personal Data to the Supplier, or disclosing Personal Data in its use of the Service, the Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.

7.2 The Supplier will:

- (a) take reasonable steps to ensure that that Vendor is obliged to comply with its obligations under applicable Data Protection Laws in the event of any Personal Data Breach; and
- (b) in the event of a Personal Data Breach, the Supplier will comply with its own obligations, including notification obligations, (if any), under applicable Data Protection Laws.

8 **Confidential Information**

8.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.

8.2 Neither party may use or disclose any Confidential Information other than:

- (a) to its employees, directors or contractors to the extent necessary in the performance of the Contract; or
- (b) with the express prior written consent of the other party; or
- (c) to its professional advisers.

9 **Warranties**

9.1 EACH PARTY WARRANTS TO THE OTHER THAT IT HAS AUTHORITY TO ENTER INTO AND PERFORM AND THE ABILITY TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT.

9.2 EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL WARRANTIES, TERMS AND CONDITIONS (INCLUDING, WITHOUT LIMITATION, WARRANTIES AND CONDITIONS AS TO FITNESS FOR PURPOSE AND MERCHANTABILITY), WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW.

10 **Termination**

10.1 Either party may terminate the Contract immediately if the other party:

- (a) breaches any of its obligations under the Contract and fails to remedy the breach within 30 days of receiving notice requiring the breach to be remedied. For the purposes of this clause 10.1(a), without limiting what may constitute a breach and without limiting any other rights that the Supplier may have in relation to payment delays or failure to pay or in relation to termination, a breach includes but is not limited to a failure by the Customer to pay any amount due by the due date; or

- (b) becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors.

10.2 On Termination of the Contract:

- (a) Except as described otherwise in the Selected Options, all amounts due to the Supplier will become immediately due and payable;
- (b) the Supplier will cease to provide the Service to the Customer, and the Customer will cease to have any entitlement to use the Service;
- (c) the provisions of the Contract that are by their nature intended to survive termination will remain in full force.
- (d) all data processes, stored, or manipulated on the terminating client domain or users will be securely erased and deleted from Supplier records except for the necessary contact information to validate future inquiries as may be required by law or legal engagement

11 Liability and Indemnity

- 11.1 SUBJECT TO CLAUSE 11.2, THE SUPPLIER WILL ONLY BE LIABLE FOR LOSSES (EXCLUDING LOSS OF BUSINESS OR PROFITS) WHICH FLOW DIRECTLY FROM A BREACH BY THE SUPPLIER OF THE CONTRACT UP TO A MAXIMUM OF THE AMOUNT PAID BY THE CUSTOMER TO THE SUPPLIER IN THE 90 DAYS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- 11.2 TO THE EXTENT PERMITTED BY LAW, IN NO EVENT IS THE SUPPLIER LIABLE TO THE CUSTOMER FOR THE SERVICE (WHICH THE CUSTOMER ACKNOWLEDGES IS BEING RESOLD TO THE CUSTOMER BY THE SUPPLIER), INCLUDING WITHOUT LIMITATION IN TERMS OF PERFORMANCE, NON-PERFORMANCE, AVAILABILITY OR NON-AVAILABILITY OF THE SERVICE, OR COMPLIANCE OR NON-COMPLIANCE WITH DESCRIPTION OF THE SERVICE ON THE WEBSITE DUE TO CHANGES MADE TO THE SERVICE PROVIDED BY THE VENDOR OR OTHERWISE (WHETHER NOTIFIED BY THE VENDOR TO THE SUPPLIER OR NOT) OR IN CONNECTION WITH ANY DATA, REPORTS OR OTHER OUTPUTS FROM THE SERVICE, OR OTHERWISE.
- 11.3 IN NO EVENT IS THE SUPPLIER LIABLE FOR ANY INDIRECT LOSS OR FOR ANY LOSS OF PROFITS, LOST SAVINGS, LOSS OF DATA, BUSINESS INTERRUPTION, INCIDENTAL OR SPECIAL DAMAGES, OR FOR ANY CONSEQUENTIAL LOSS. IN ADDITION, THE SUPPLIER IS NOT LIABLE FOR ANY DAMAGES CLAIMED BY THE CUSTOMER BASED ON ANY THIRD-PARTY CLAIM, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM IN NEGLIGENCE. IN NO EVENT IS THE SUPPLIER LIABLE FOR ANY DAMAGES CAUSED (WHETHER DIRECTLY OR INDIRECTLY) BY THE CUSTOMER'S FAILURE TO PERFORM ITS RESPONSIBILITIES UNDER THE CONTRACT.
- 11.4 THE CUSTOMER ACKNOWLEDGES THAT IN USING THE SERVICE, THE CUSTOMER MAY BE REDIRECTED TO THIRD PARTY WEBSITES AND/OR ELECT TO USE THIRD-PARTY PRODUCTS AND SERVICES, AND:
- (a) ACCESS OR USE BY THE CUSTOMER OF ANY SUCH THIRD-PARTY WEBSITES, PRODUCTS OR SERVICE IS SUBJECT TO THE THIRD PARTY'S TERMS AND CONDITIONS; AND

- (b) THE SUPPLIER ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR OR IN CONNECTION WITH ACCESS OR USE BY THE CUSTOMER OF ANY SUCH THIRD-PARTY WEBSITES, PRODUCTS OR SERVICES.

11.5 THE CUSTOMER INDEMNIFIES THE SUPPLIER AGAINST ANY COSTS (INCLUDING LEGAL COSTS ON A SOLICITOR/ATTORNEY AND OWN CLIENT BASIS, ALL AND ANY COURT COSTS AND WITNESS FEES AND RELATED LEGAL EXPENSES), EXPENSES, CLAIMS, DEMANDS OR LIABILITY WHETHER DIRECT, INDIRECT OR OTHERWISE, AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY OR OTHERWISE, ARISING OUT OF, AND MUST AT THE SUPPLIER'S REQUEST, AND SUBJECT TO CLAUSE 11.6 AND ANY REASONABLE CONDITIONS IMPOSED AT THE SUPPLIER'S DISCRETION, AT THE CUSTOMER'S OWN COST DEFEND OR SETTLE, ANY CLAIM, ACTION OR PROCEEDINGS BROUGHT AGAINST THE SUPPLIER IN CONNECTION WITH:

- (a) USE OF THE SERVICE OTHERWISE THAN IN ACCORDANCE WITH THE CONTRACT OR AS REASONABLY INTENDED BY THE SUPPLIER OR VENDOR; OR
- (b) A BREACH BY THE CUSTOMER OF THE CONTRACT.

11.6 If the Supplier wishes to rely on an indemnity under clause 11.5, the Supplier:

- (a) must ensure that the Customer is notified promptly in writing of the relevant claim, action or proceedings ("Claim") once it becomes aware of the Claim;
- (b) will make no admission of liability regarding the Claim nor any offers of settlement regarding the Claim without the Customer's written approval;
- (c) may, at its discretion, grant control of the defence or settlement to the Customer;
- (d) will, where the Supplier has granted control of the defence or settlement negotiations to the Customer:
 - i. co-operate reasonably with the Customer in defending or settling the Claim and make its employees available to give statements, advice and evidence, as the Customer may reasonably request, all at the expense of the Customer; and
 - ii. give the Customer sufficient authority and relevant information in its possession or control to assist the Customer to conduct the defence of the Claim and all negotiations for its settlement or compromise.

12 **Dispute Resolution**

12.1 In the event of any dispute arising between the parties in relation to the Contract, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 12.

12.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

12.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon by the parties in writing), either party may utilize any other legal remedies available to it in seeking to resolve the dispute.

13 **Consumer Guarantees**

13.1 The Customer acknowledges that where it is acquiring the Service for the purposes of a business, to the extent permitted by the relevant legislation, any statutory consumer guarantees or legislation that are intended to apply to non-business consumers only will not apply.

14 **General**

14.1 Entire agreement: The Contract constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Contract.

14.2 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

14.3 Partial invalidity: If any provision of the Contract or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Contract and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

14.4 Independent contractor: The Supplier is an independent contractor to the Customer and is in all respects independent of the Customer. Nothing in the Contract constitutes either party a partner, agent, employee, or joint venture of the other.

14.5 Suspension: The Supplier may suspend performance of its obligations under the Contract for so long as it is unable to perform for reasons outside of its control.

14.6 Assignment: The Customer is not permitted to assign its rights under the Contract. There is no restriction on assignment by the Supplier of its rights or obligations under the Contract, provided that the Supplier and/or the assignee complies with any applicable Third Party Vendor requirements in respect of the assignment.

15 **Notices**

15.1 Except where the Contract anticipates that notifications will be made via the Website, notices from the Supplier to the Customer under the Contract will be sent to the Customer at the Customer's contact details specified in the Customer Information. The Customer may notify the Supplier of a change to the contact details specified in the Customer Information, on seven days' notice in writing to the Supplier. Notices from the Customer to the Supplier under the Contract must be sent to the Supplier at the Supplier's contact details included on the Website or otherwise as notified by the Supplier.

15.2 Notices sent by email will be deemed received on sending, provided that the sender does not receive an automatic delivery failure notification.

16 **Governing Law and Jurisdiction:**

16.1 The Contract is governed by the laws of the Indiana, USA.

17 **Definitions:** In these terms and conditions:

“Contract” means the Customer Information, Selected Options, Relevant Pricing and these terms and conditions (as updated from time to time under clause 1.2 above);

“Commencement Date” means the date of Registration as confirmed by the Supplier;

“Confidential Information” means any proprietary information, know-how and data disclosed or made available by one party to the other party but does not include any information which (a) is in the public domain without any breach of the Contract; (b) on receipt by the other party is already known by that party; (c) is at any time after the date of receipt by the other party, received in good faith by that party from a third party; (d) required by law to be disclosed by the other party;

“Customer” means the customer named in the Customer Information;

“Customer Data” means the Customer's data that is entered by the Customer and/or processed and/or accessed or accessible by the Supplier or Vendor, in connection with provision or use of the Service;

“Customer Information” means the customer name, email address and any other contact information submitted by or on behalf of a customer in the course of Registration;

“Data Protection Laws” means any and all laws relating to Personal Data (including data security, protection, privacy or the processing of Personal Data), and includes any statutory modification or re-enactment of such laws for the time being in force;

“Intellectual Property” includes all copyright, trademarks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered;

“Maximum Number” means, where applicable, the maximum number of users chosen by the Customer as a Selected Option;

“Permitted Users” means employees, directors or contractors of the Customer (unless other external parties are expressly permitted by the Supplier to be permitted users) not exceeding the relevant Maximum Number as specified in the Selected Options;

“Personal Data” means any information relating to an identified or identifiable natural person, or any equivalent definition in relevant data protection or privacy laws in force at the relevant time;

“Personal Data Breach” means unauthorised access to, unauthorised disclosure of, or loss of, Personal Data (being Personal Data that is Processed by the Supplier under this Agreement), or any equivalent definition in relevant data protection or privacy laws;

“Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or

otherwise making available, alignment or combination, restriction, erasure or destruction, and 'Process' and 'Processed' has/have a corresponding meaning, or any equivalent definition in relevant data protection or privacy laws;

"Registration" means the Customer registers on the Website to begin receiving the Service or purchases the Service on the Website, and **'Registers'** has a corresponding meaning;

"Relevant Pricing" means the pricing for the Selected Options chosen on Registration;

"Selected Options" means options selected during Registration, which may include options for the types of Service, the term (if applicable), the number of users and other matters;

"Service" means the service or subscription chosen by the Customer as part of the Selected Options, for which the Supplier is a reseller;

"Systems" means, as the context permits, the software used by the Supplier or by third parties to provide the Service and/or the equipment on which that software is installed or used to host the Service or the Website (whether this is the Supplier's software or equipment or is third party software or equipment);

"Vendor" means the third-party vendor of the Service;

"Website" means CyberDefend247.com;

"Working Day" means a day that is not a Saturday, Sunday or public holiday in the United States.