END USER PRODUCT LICENSE (EULA)

This End User Product License (this “Agreement”) is entered into as of\_\_\_\_\_\_\_\_ between iDefender, LLC (“Industrial Defender”), and \_\_\_\_\_\_\_\_\_(“End User”) which are individually named the “Party” and collectively referred to as the “Parties”.

**1. Scope of Agreement.**

1.1 Under this Agreement, Industrial Defender hereby licenses the Products listed on Exhibit A hereto to the End User for the purposes described in Exhibit A and subject to the terms and conditions set forth in Exhibit B. The license hereunder shall have a limited term as set forth in Section 2 below. All fees, if any, to be charged by Industrial Defender for the Products are set forth in Exhibit A.

**2. Term and Termination**

2.1 Term. This Agreement shall become effective on the date first written above and continue for a period thereafter as defined in Exhibit A of this Agreement, unless earlier terminated as provided below.

2.2 Termination. Industrial Defender may terminate this Agreement at any time upon one day’s written notice to End User.

2.3 Effect of Termination. Upon termination of this Agreement, End User must immediately cease all use of the Products and all obligations of Industrial Defender shall cease. Upon termination, the End User agrees to destroy or return to Industrial Defender all Products and collateral material and to stop using any Industrial Defender copyrighted, trademarked, or service marked items. For the avoidance doubt, if a license to the Products is terminated, End User’s authorization to use the Products is also terminated.

**3. Miscellaneous**

3.1 Disputes. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware in each case located in the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

3.2 Assignment. Neither Party may assign this Agreement or any right or obligation hereunder, directly, indirectly, by operation of law or otherwise, without the prior written consent of the other Party (which shall not be unreasonably withheld). The assignment of this Agreement, in whole or in part, within a Party or an affiliate or to a successor organization by merger or acquisition does not require the consent of the other Party. It is not considered an assignment for Industrial Defender to divest a portion of its business in a manner that similarly affects all of its customers. Any other assignment by either Party shall be void and of no force or effect. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each Party.

3.3 Amendment. This Agreement may only be amended by a written instrument executed by each Party. An amendment to extend the term set forth in Section 2.1 above may be documented by an email exchange between an authorized officer of each Party acknowledging the extension hereof and specifically referencing Section 2.1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by a duly authorized representative as of the date first written above.

|  |  |  |  |
| --- | --- | --- | --- |
| **Industrial Defender:** |  | **End User:** |  |
| By: |  | By: |  |
| Name: | William M. Pratt | Name: |  |
| Title: | VP OEM and Channel Sales | Title: |  |
| Address: | iDefender, LLC 225 Foxborough Blvd., Suite 202 Foxborough, MA 02035 | Address: |  |

Exhibit A

Products Licensed hereunder:

Limitations on use of Products: Initial License Period will be six months

Fees to be payable by End User for the Products, if any: **TO BE DETERMINED BASED ON DISCUSSIONS**

**Exhibit B**

**License Terms & Conditions**

iDefender, LLC

The following License Terms and Conditions (the “**License Agreement**”) apply to and are incorporated by reference into the ordering document agreed upon between iDefender, LLC (“**Industrial Defender**”) and the customer (“**Customer**”) as identified in an applicable statement of work, purchase order, **s**ervice order, task order, order form, exhibit, change authorization, software licensing document, software licensing certificate or other such document(s) executed by Customer and Industrial Defender that contains specific details and terms with respect to the hardware, software and services being performed or delivered (the “**Order**”). This License Agreement sets forth the terms and conditions under which Customer may use (i) Industrial Defender’s proprietary software (the “**Software**”) that is specifically licensed to Customer as described in the Order, and (ii) any hardware provided to Customer (the “**Hardware**”), as more fully described in the Order and to be used in conjunction with the Software (the “**License**”). For purposes of this License Agreement, the term “**Software**” means the applications listed in an applicable Order and any Updates (as defined in the Industrial Defender Support Policy incorporated by reference into the Order). The term “**Products**” means the Software and any IP Provided-Hardware. Customer acknowledges and agrees that it is not relying on any agreement, representation, statement or warranty (whether or not in writing) made or given prior to the commencement of the term of the License Agreement, except as expressly provided herein with respect to the Software, Hardware or any maintenance or support services described in the applicable Order. Industrial Defender and Customer hereby agree as follows:

1. **Software License Grant**. Industrial Defender grants Customer a non-exclusive, non-assignable, non-transferable, limited license to Use one copy of the Software for each authorized user purchased under an applicable Order. "**Use**" means storing, loading, installing, executing or displaying the Software on a hardware unit (including but not limited to Hardware provided by Industrial Defender). If Customer obtained the Software in connection with Hardware, Customer may only Use the Software in connection with such Hardware. Customer may not modify or disable any licensing or control features of the Software. If Customer has paid for a "**Concurrent User**" license, Customer may not allow more than the maximum number of authorized users to Use the Software concurrently for which Customer has paid.
2. **Prices and Payment.** 
   1. All fees in respect of license and support of the product shall be payable in United States dollars and due thirty days (30) from the date of invoice. In no event will the invoice be sent prior to shipment of the product. Prices are exclusive of, and Customer will pay, applicable sales, use, property, customs, excise value-added, withholding or other taxes (except Industrial Defender’s income tax) and all applicable shipping, freight, and insurance charges. If applicable, Customer will provide Industrial Defender with a tax exemption certificate, and Industrial Defender will exempt Customer in accordance with applicable law. If Industrial Defender is directly assessed for any such taxes, or additional taxes, interest, penalties which may be due with respect to the Products provided under this Agreement, Customer will pay Industrial Defender within thirty (30) days of receipt of invoice for such items, or if the tax is not due, provide evidence reasonably satisfactory to Industrial Defender. Industrial Defender reserves the right to impose on any overdue amounts an interest charge on a monthly basis, calculated at an annual rate of the lower of twelve percent (12%) or the maximum rate allowable by law. Customer will also pay any reasonable additional costs of collection (including without limitation reasonable attorney fees) incurred by Industrial Defender for failure to pay any undisputed amounts owed hereunder when due.
   2. Payment terms, other than those specified in this **Section 2(b)**, are subject to Industrial Defender credit approval. Industrial Defender may change credit or payment terms at any time when, in Industrial Defender's sole discretion, Customer’s financial condition, previous payment record, or the nature of Customer’s relationship with Industrial Defender so warrants. Upon request and to assist Industrial Defender in granting credit, Customer shall submit any combination of the following documents as determined by Industrial Defender: (a) audited financial statements, (b) credit application (attached - subject to Industrial Defender’s verification), and/or (c) statutory filings (i.e. tax filing).
3. **Ownership**. The Software is owned and copyrighted by Industrial Defender. Customer’s license confers no title to, or ownership in the Software and is not a sale of any rights in the Software. Customer may not modify, adapt, translate, rent, lease, loan, resell, distribute, or create derivative works based upon the Software, or any part thereof, without the action being expressly agreed upon in a separate agreement by Industrial Defender. Customer may not use the Products in a service bureau or time-sharing arrangement. The only rights and licenses granted herein are the express rights and licenses granted hereunder for the term of this Agreement. All other rights and licenses are hereby reserved by Industrial Defender.
4. **Copies and Adaptations**. Customer may only make copies of the Software for archival purposes or when copying is an essential step in the authorized Use of the Software. Customer must reproduce all copyright notices in the original Software on all copies. Customer may not copy the Software onto any public network.
5. **No Disassembly or Decryption**. Customer may not disassemble, reverse engineer or decompile the Software unless Industrial Defender’s prior written consent is obtained.
6. **Termination**. Industrial Defender may terminate Customer’s license to use the Software and any Hardware upon written notice for failure to comply with any of these Terms and Conditions or for failure to timely pay Industrial Defender in full for the Products. Upon termination, Customer must immediately cease all use of the Software, and either return the Products to Industrial Defender, together with all copies and merged portions in any form, or destroy all copies, except for electronic copies residing in automatic data backup systems where destruction is impracticable, and certify such destruction in writing to Industrial Defender. Other than the rights and licenses granted herein to Customer, and the warranty section, each of which shall immediately terminate upon such termination, all other provisions contained herein shall survive termination. Termination shall not affect Customer’s obligation to pay Industrial Defender for any amounts due in connection with an applicable Order.
7. **Shipment and Risk of Loss**. Industrial Defender will ship and insure according to Customer’s instructions, and risk of loss and damage will pass to Customer at Industrial Defender’s shipping point. Shipping and insurance charges will be billed separately to Customer.
8. **Warranty.**
9. Industrial Defender warrants that for a period of 90 days from the date of delivery the Products will perform substantially in conformance with the applicable specifications. If the Products fail to perform as warranted in this **Section 8(a)**, Customer’s sole and exclusive remedy will be for Industrial Defender, at its option, to (i) replace the Products with Products which conform to the warranty, (ii) correct the error or (iii) refund the purchase price; provided Customer has notified Industrial Defender in writing of such defects during such 90-day period.

**EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, THE PRODUCTS ARE PROVIDED “AS IS”, AND INDUSTRIAL DEFENDER MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS, EITHER EXPRESS OR IMPLIED, IN RESPECT OF THE PRODUCTS, INCLUDING WITHOUT LIMITATION, STATUTORY OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ARISING FROM CUSTOM, COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT ALLOWABLE BY APPLICABLE LAW.**

1. **Industrial Defender does not warrant that PRODUCTS will operate in hardware and software combinations selected by Customer unless such combinations are CERTIFIED by Industrial Defender AS SET FORTH IN THE APPLICABLE SPECIFICATIONS, or meet ANY TECHNICAL requirements specified by Customer unless COMPLIANCE WITH SUCH REQUIREMENTS IS CERTIFIED by Industrial Defender AS SET FORTH IN THE APPLICABLE SPECIFICATIONS. IN ANY EVENT, THE STANDARD OF WARRANTY APPLICABLE TO ANY SUCH COMBINATIONS OR COMPLIANCE WITH TECHNICAL REQUIREMENTS OF CUSTOMER SHALL BE LIMITED TO THAT OF PERFORMANCE substantially in conformance with the applicable Specifications. Industrial Defender DOES NOT WARRANT THAT THE PRODUCTS WILL BE SUITABLE FOR THE BUSINESS PURPOSES OF CUSTOMER OR ITS CUSTOMERS.**
2. **Industrial Defender does not warrant that the operation of Products will be completely uninterrupted or error-free. CUSTOMER ASSUMES THE ENTIRE RISK AS TO RESULTS AND PERFORMANCE OF THE SOFTWARE AND ANY IP-PROVIDED HARDWARE. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND ANY IP-PROVIDED HARDWARE ARE DESIGNED FOR USE BY CUSTOMER AS A COMPONENT OF CUSTOMER’S SECURITY AND COMPLIANCE STRATEGY, AND CUSTOMER (AND NOT INDUSTRIAL DEFENDER) SHALL BE SOLELY RESPONSIBLE FOR ENSURING THAT ITS SECURITY AND COMPLIANCE NEEDS ARE MET.**
3. The above warranties do not apply to defects resulting from (i) improper or inadequate maintenance by Customer or any third party; (ii) use of Products in combination with Customer or third-party-supplied software, equipment, interfacing or supplies; (iii) any modifications to the Products if not authorized by Industrial Defender in writing; (iv) any improper use or operation outside of the specifications for the Product; (v) abuse, negligence, accident, loss or damage in transit; (vi) improper site preparation; or (vii) maintenance or repairs not authorized by Industrial Defender in writing.
4. **Indemnity.**
5. Industrial Defender shall indemnify, defend and hold Customer harmless from and against any and all third-party claims, suits, actions, proceedings, whether administrative or not, demands, losses, damages, costs and expenses of whatsoever nature, including reasonable attorney fees and expenses) or other liability to the extent the same alleges infringement of any patent, trademark, or copyright or misappropriation of a trade secret arising solely from any use of the Products in the unmodified form provided by Industrial Defender in any country or jurisdiction in which Industrial Defender does business at the time of the events giving rise to such claim or action, and only provided that such Products have been used in conformity with all applicable specifications, written instructions and documentation provided by Industrial Defender (an “**Infringement Claim**”).
6. The foregoing indemnification obligation shall be subject to and conditioned on Customer’s (i) promptly giving Industrial Defender written notice of any such Infringement Claim arising there from, (ii) giving Industrial Defender full authority, information and assistance to defend such Infringement Claim, and (iii) giving Industrial Defender sole control of the defense of such Infringement Claim and all negotiations for the compromise or settlement thereof. If a Product (or any portion or element) is, or in Industrial Defender’s opinion is likely to be, held to be infringing, Industrial Defender, at its expense and in its sole discretion, may: (i) procure the right to allow Customer to continue to use the Product; or (ii) modify or replace the Product or infringing portions thereof to become non-infringing; or (iii) direct the return of the Product and refund to Customer the monetary sums paid for such Product, less a pro rata straight line depreciation amount based on a three (3) year useful working life for the Product. The foregoing remedies constitute Customer’s sole and exclusive remedies and Industrial Defender’s entire liability with respect to infringement of intellectual property rights. Industrial Defender’s indemnification obligations shall not apply with respect to an Infringement Claim if and to the extent such claim arises out of (i) the combination or use of the Product with products or services not supplied by Industrial Defender or approved in writing by Industrial Defender in advance of such combination; (ii) any modification or alteration of the Product (other than modifications made by or at the written direction of Industrial Defender); (iii) Customer’s continued use of a prior version or release of the Product, if a more current version or release has been delivered or made available by Industrial Defender, (iv) Customer’s misuse of the Product; and/or (v) Customer’s failure to use corrections or enhancements made available by Industrial Defender.

# **Limitation of Liability.** NEITHER INDUSTRIAL DEFENDERNOR ANY OF ITS SUPPLIERS, LICENSORS, OR DISTRIBUTORS, SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, NON-COMPENSATORY, PUNITIVE, OR EXEMPLARY DAMAGES RELATED TO THIS AGREEMENT OR ANY SOFTWARE OR HARDWARE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOST INCOME, LOST SAVINGS, REGULATORY AGENCY FINES, WORK STOPPAGE OR IMPAIRMENT OF OTHER GOODS, OR DAMAGES RESULTING FROM LOSS OF USE OR LOSS OF THE HARDWARE, SOFTWARE OR ANY ASSOCIATED DATA. THIS LIMITATION WILL APPLY EVEN IF INDUSTRIAL DEFENDER, ITS LICENSORS, SUPPLIERS OR DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL INDUSTRIAL DEFENDER’S, NOR ANY OF ITS LICENSORS’, SUPPLIERS’ AND DISTRIBUTORS’, LIABILITY FOR DAMAGES HEREUNDER EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY YOU FOR THE PRODUCTS. THE LIMITATIONS SET FORTH HEREIN SHALL BE DEEMED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

1. **Export Requirements**. Customer may not export or re-export the Products or any copy or adaptation in violation of any applicable laws or regulations.
2. **Government Use.**  Customer represents that Customer is not an agency of the United States Government. Customer shall not acquire any Products on behalf of any unit or agency of the United States Government without the prior written consent of Industrial Defender and mutual agreements to amendments to these Terms and Conditions specific to such acquisition. Without limiting the foregoing, the Software and any accompanying documentation are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government or its contractors is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or any successor regulation or as set forth in the particular department or agency regulations or rules which provide Industrial Defender or its licensors with protection equivalent to or greater than that clause.
3. **Governing Law**. This Agreement has been made in and its validity, interpretation, construction and performance shall be governed by the laws of the State of Delaware, and the parties hereby agree to submit to the exclusive jurisdiction of the state or federal courts located within the State of Delaware to resolve any dispute that arises between them in relation to the License Agreement.

1. **General.** In the event any provision of this License Agreement is held by a tribunal of competent jurisdiction to be contrary to applicable law, the remaining provisions of this License Agreement will remain in full force and effect. Neither party may assign this License Agreement, in whole or in part, without the prior written consent of the other party; provided however that either party may assign this License Agreement to a successor in interest in the event of a reorganization, merger, consolidation or sale of all or substantially all of such party’s assets or stock. A party’s waiver of any breach of this License Agreement by the other party shall not constitute a waiver of any subsequent breach of the same or different provisions hereof. All notices to Industrial Defender called for under this Agreement will be in writing and given by personal delivery, certified mail, return receipt requested, or by commercial courier, to the following address: 225 Foxborough Blvd., Suite 201, Foxboro, MA 02035, or to such other address or addresses as Industrial Defender may specify in writing to Customer. Notice will be deemed given on actual receipt by Industrial Defender. This License Agreement, together with the Order, any non-disclosure agreements between Customer and Industrial Defender, and any invoice(s) issued by Industrial Defender to Customer for payment for Products, constitutes the entire agreement between the parties and may only be modified by an instrument in writing signed by both parties. No conflicting terms on any purchase order or similar purchase documentation shall apply, and all such terms are expressly rejected by Industrial Defender. This License Agreement cancels and supersedes any and all prior proposals (oral or written), understandings, representations, conditions, warranties, covenants and other communications between the parties, which relate to the subject matter of this License Agreement. Industrial Defender reserves the right, upon reasonable advance written notice to Customer, to inspect Customer’s facilities, servers and computers to ensure that Customer is in full compliance with this Agreement.