



Term Software License and Support Agreement

Version 1.9.2

This Term Software License and Support Agreement (the “**Agreement**”) is made by and between DefectDojo, Inc., a Delaware corporation with offices at 1023 Cap Rock Hill, New Braunfels, TX 78132 (the “**Company**” or “**Provider**”), and the customer that is specified in a corresponding, executed, Quote(s) or Purchase Order(s) (the “**Customer**”). Company and Customer are each referenced herein individually as a “**Party**”, and collectively as the “**Parties**”.

Date: December 19, 2022

1.0 Definitions.

- 1.1 “**Quote**” means a valid quotation document issued by Company that defines the quantity, fees, duration, Product, license, subscriptions, or services offered for purchase to Customer under this Agreement.
- 1.2 “**Service Desk**” means Company’s customer support platform, which is available via the Internet, through which all requests for Support Services by Customer are to be made.
- 1.3 “**Support Ticket**” means a request for Support Services exclusively made through Company’s Service Desk by either (a) emailing the specific support email address provided to the Customer for the purpose of creating Support Tickets, or (b) by directly visiting the Service Desk and creating such request.
- 1.4 “**Support Services**” means monitored email support, Service Desk Support Tickets, Software enhancements, and Remote Support.
- 1.5 “**Support Period**” means the duration defined in an applicable Quote for a purchased Support Plan.
- 1.6 “**Support Plan**” means a purchased support subscription to Support Services and access to the Service Desk for the Support Period.
- 1.7 “**Holidays**” means all United States federal and state holidays.
- 1.8 “**Business Day**” means any day that falls on or between, Monday through Friday, with the exception of Holidays.
- 1.9 “**CST**” means the North American Central Standard Time Zone.

- 1.10 “**Official Github Repository**” means the website and the contents of <https://github.com/DefectDojo/django-DefectDojo>.
- 1.11 “**Community Edition**” means the open source DefectDojo software and related open source plugins that are available free of charge. The Community Edition is not included in the definition of Product.
- 1.12 “**Edition**” means a combination of software features that are offered as a software package by Company and are provided directly by Company. Company offers the following four Editions: (a) the Community Edition as defined in Section 1.11 above, and (b) three plugins to the Community Edition, which are the Products covered by this Agreement.
- 1.13 “**Product**” means a commercial Edition that is licensed for a fee by Company. This includes any of the following three Editions: (a) a Plus Edition, (b) a Pro Edition, or (c) an Enterprise Edition. Each Product is installed as a plugin and runs on top of a Community Edition.
- 1.14 “**Software**” means all Editions, plugins, and derivatives of the DefectDojo software including both the Community Edition and Product Editions.
- 1.15 “**Fees**” means the Product license fees, Support Plan fees, and Support Hours fees charged by Company and set forth in a Quote.
- 1.16 “**Service Hours**” means the working (business) hours of Company for the purposes of Support Plans and Support Services.
- 1.17 “**Support Hours**” or “**Professional Service Hours**” means professional service hours for the exclusive use of delivering Support Services.
- 1.18 “**Response Time**” means the time by which Company will respond to a Support Ticket in accordance with a purchased Support Plan.
- 1.19 “**Remote Support**” means assistance provided by Company, that is counted against Support Hours, and is delivered remotely by means of (a) a virtual video conference, or (b) temporary secure remote access, that is provided by the Customer, to the infrastructure that holds the Software.
- 1.20 “**Effective Date**” means the date this Agreement is entered into by execution of a Quote hereunder or issuance of a purchase order by Customer.

2.0 Grant of License and Proprietary Rights.

- 2.1 **Grant.** Subject to the terms and conditions of this Agreement and payment of the Fees outlined in a Quote that includes a license grant, Company grants to the Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable license, for the duration specified in an applicable Quote: (a) to use the Product, for internal use only and subject to the license limitations; (b) to make a reasonable number of copies of the Product for inactive backup and archival purposes only. The license granted herein does not grant any rights whatsoever to the source code of the Product.
- 2.2 **Product Restrictions.** The Customer may not, and may not permit others to: (a) use the Product in excess of the license restrictions and quantities of Product licenses purchased; (b) attempt to circumvent any license restrictions or license limitations; (c) reverse engineer, decompile, disassemble or create derivative works of the Product; (d) attempt to derive the source code of the Product; (e) reproduce, publish, distribute, transfer, publicly display, resell, rent, lease, sublicense, loan, or lend the Product to any third party; (f) use the Product to provide services to a third party, or make the Product available in any similar commercial time-sharing arrangement; (g) transfer, assign or permit the sharing of licenses or license keys to a third party; or (h) make available to any third party any output of the Product, including benchmarking results.
- 2.3 **Proprietary Rights.** The Software is licensed, not sold, and Company retains all right, title and interest in and to the Software, and all copies, improvements, enhancements, modifications and derivative works of the Software, including, without limitation, all patent, copyright, trade secret, trademarks and other intellectual property rights. All express or implied rights to the Software not specifically granted herein are expressly reserved to Company.
- 2.4 **Proprietary Notices.** Company's copyright, logos, trademark and other proprietary notices contained on or in any copy of the Software as delivered may not be removed.

3.0 Support Services.

- 3.1 **Customer Responsibilities.** Customer responsibilities in support of this Agreement include:
- Payment for all Fees at the agreed interval(s).
 - Reasonable availability of customer representative(s) when resolving a service related incident or request.
 - Maintenance, deployment, code merges, updates, and management of Software, unless a Managed Instance is purchased in accordance with Section 4 below.
 - Maintenance, deployment, management, and updates of all Customer server(s).
 - Disaster recovery, business continuity, and backups of Customer infrastructure and server(s).

- 3.2 Company Responsibilities. Company responsibilities in support of this Agreement are:
- Performing the Support Service(s) as defined in this Agreement.
 - Meeting the Response Time that correlates to Customer's purchased Support Plan for service related events.
- 3.3 Support Plans. Coverage parameters specific to the Support Plans under this Agreement are as follows:
- Basic Support**
- Service Hours: 9:00 A.M. to 6:00 P.M. (CST) Monday – Friday
 - Excludes Holidays.
 - Response Time: within 5 business days.
- Rapid Support**
- Service Hours: 9:00 A.M. to 6:00 P.M. (CST) Monday – Friday
 - Excludes Holidays.
 - Response Time: within 2 business days.
- Lightspeed Support**
- Service Hours: 9:00 A.M. to 6:00 P.M. (CST) Monday – Friday
 - Includes Holidays.
 - Response Time: within 1 business day.
- 3.4 Software Acceptance. Any and all features, enhancements, and code is considered to be complete, delivered, and working when the standard DefectDojo unit and integration tests that are executed by Travis CI (or comparable replacement tool) and found in the Official DefectDojo Github Repository are passed.
- 3.5 Right to Refuse. COMPANY RESERVES THE RIGHT TO, REFUSE TO PERFORM OR CREATE, ANY SOFTWARE ENHANCEMENT FOR ANY REASON.
- 3.6 Right to Assign Personnel. Company reserves the right to determine which of its personnel will be assigned to a particular project, to replace or reassign such personnel and/or subcontract to qualified third persons part or all of the performance of services hereunder. Customer hereby acknowledges that Company personnel working on projects under this Agreement may perform similar services from time to time for others, and that this Agreement shall not prevent Company from performing such similar services or restrict Company from so assigning the personnel provided to Customer under this Agreement.

- 3.7 No Hire. Customer agrees that during the Term of this Agreement and for a period of twelve (12) months immediately following the period for which Company or its affiliates last performed services for the Customer under this Agreement, neither Customer nor its employees, agents, subsidiaries, or other affiliated persons or organizations shall solicit or influence, directly or indirectly, employees, consultants or subcontractors of Company or its affiliated organizations (each such person being a "Restricted Person") to leave the employ of Company or its affiliates, nor hire or engage any Restricted Person as an employee or independent contractor. Such twelve month period shall be tolled during the time in which all, or any part of this Agreement, is being litigated between the parties.
- 3.8 Placement Fee. Company may, in its sole discretion, waive in writing any violation by Customer of Section 3.7 as to any particular Restricted Person upon Customer's request. If Company determines to waive Customer's violation as contemplated in the previous sentence, Customer agrees to pay Company a placement fee equal to thirty-five percent (35%) of the total annual compensation schedules to be paid to such Restricted Person or thirty-five percent (35%) of the total annual compensation paid to the Restricted Person by Company, whichever is greater. Notwithstanding anything else in this Agreement to the contrary, Customer shall have paid Company all outstanding Fees due from Customer prior to hiring any Restricted Person in accordance with this Section 3.8.
- 3.9 Time For Performance. Customer understands that the nature of the services to be performed hereunder is such that the time required for performance cannot be determined in advance, and that all milestones and timetables regarding performance of the services are therefore only estimates.
- 3.10 Confidentiality. Customer and Company may have access to or be exposed to information of the other party not generally known to the public, including, but not limited to, software, product plans, marketing and sales information, Customer lists, "know-how," or trade secrets which may be designated as being confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential ("Confidential Information"). Confidential Information may not be shared with third parties unless such disclosure is to Company or Customer as applicable, including employees, agents and subcontractors, on a "need-to-know" basis in connection with its performance of this Agreement, so long as such personnel have agreed to treat such Confidential Information under terms at least as restrictive as those herein. The foregoing shall not include information which was known by one party prior to its receipt from the other or is or becomes public knowledge without the fault of the recipient; is received by the recipient from a source other than a party to this Agreement; or a party is required to disclose in response to an order by a court of competent jurisdiction provided that advance notice of the disclosure in response to the order is provided to other party.

4.0 Managed Instances

If a Managed Instance is purchased by the Customer, the following additional responsibilities apply and are in scope of this Agreement. Company may, at Company's sole discretion, provide a Managed Instance on a trial basis ("Trial Instance"). A Trial Instance is provided exclusively for evaluation purposes, and is not subject to Sections 4.1, 4.2, or 4.4.

- 4.1 Managed Instance Company Responsibilities. Company will maintain a Managed Instance of the Software that is made available to the Customer. Company may utilize a shared infrastructure provider or cloud service provider of Company's choice. Company will apply patches to the Managed Instance in accordance with the following:
- Software releases: within 10 days of release.
 - Software security patches: within 72 hours of release.
 - Server patches: on a monthly basis.
 - Firewall changes: within the Response Time of applicable, purchased, Support Plan.
- 4.2 Managed Instance Backups. Company will maintain backups of Software data. Backups are created on a daily basis. The following backups are preserved while all other copies are erased or destroyed:
- 24 hours prior.
 - One week prior.
 - One month prior.
- 4.3 Managed Instance Availability. While patching and maintenance is underway, the Managed Instance may be unavailable. Company will perform patching and maintenance outside of Customer's working hours when reasonably possible.
- 4.4 Purposefully Omitted.
- 4.5 Managed Instance Customer Responsibilities. **In addition to the responsibilities outlined above, in the event that restoration from a backup is deemed necessary by the Customer, it is the responsibility of the Customer to notify the Company in a timeframe consistent with the saved backups.**
- 4.6 Managed Instance Termination. IN THE EVENT OF LATE OR NONPAYMENT A FINAL COPY OF THE DATABASE WILL BE PROVIDED TO THE CUSTOMER AND THE SERVER WILL BE TERMINATED IMMEDIATELY. ALL OTHER BACKUPS WILL BE TERMINATED WITH THE SERVER.

5.0 Warranties, Guarantees, and Liabilities.

- 5.1 Software Assumptions. Company cannot and does not make any guarantees or warranties regarding the Software, expressly or implied, including, but not limited to, functionality and integrity. Software is exclusively provided on an “AS IS” basis. Please refer to the DefectDojo Community License for additional Community Edition disclaimers:

<https://github.com/DefectDojo/django-DefectDojo/blob/master/LICENSE.md>

- 5.2 Limitations on Damages. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, COMPANY SHALL NOT BE LIABLE OR OBLIGATED IN ANY MANNER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, LOSS OF USE, REMEDIATION COSTS, EXTRA EXPENSE OR LOSS OF GOODWILL, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. EXCEPT FOR LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE AGGREGATE LIABILITY OF COMPANY UNDER, OR FOR BREACH OF, THIS AGREEMENT, OR FOR ANY CAUSE WHATSOEVER, OR OTHERWISE ARISING FROM THE SOFTWARE OR THE USE THEREOF, SHALL NOT EXCEED THE FEES IN THE QUOTE UNDER WHICH THE CLAIM ARISES. The foregoing limitation of liability shall not apply to personal injury or death resulting from Company’s negligence, for fraud, or for any other matter for which liability cannot be excluded or limited by law.

6.0 Term, Termination, and Survival.

- 6.1 Term. The term of this Agreement will begin on the Effective Date and will continue until the first anniversary for which no Support Plan or license grants are in effect, or until the first anniversary for which all Support Hours are considered delivered, whichever occurs later, unless this Agreement is earlier terminated in accordance with this Agreement or extended by written agreement of the Parties.
- 6.2 Termination Upon Insolvency. Either Party may terminate this Agreement by written notice to the other, as in default of this Agreement, if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition for bankruptcy, or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business, voluntarily or otherwise.

- 6.3 Effect of Termination. Upon termination of this Agreement, all licenses and rights granted under this Agreement shall immediately terminate, and all unlicensed copies of the Product shall be deleted, save for any inactive archival copies required for legal, regulatory or audit purposes.
- 6.4 Limited Survival. The Parties' rights and obligations contained in Sections 2.4 ("Proprietary Notices"), 3.9 ("Confidentiality"), 5.2 ("Limitation of Damages"), 6.3 ("Effect of Termination"), 7.0 ("General Terms"), 6.5 ("Late or Nonpayment"), and any obligations to make payment of Fees or other amounts accrued or due hereunder prior to termination, shall survive any termination of this Agreement.
- 6.5 Late or Nonpayment. The Parties agree that late payment or nonpayment is a breach of this Agreement, and Company shall have the right to either: (a) suspend all services until complete payment of Fees is received (b) deem such breach incurable, at Company's sole discretion.

7.0 General Terms.

- 7.1 Notices. All notices or demands hereunder shall be by traceable express courier service or certified or registered mail, return receipt requested, sent to the address of the receiving party, and shall be deemed complete ten days after mailing. Notices to Company shall be sent to the attention of: General Counsel, with a copy to legal@defectdojo.com.
- 7.2 Relationship of Parties. Under this Agreement, Company shall be an independent contractor. This Agreement shall not be construed as creating a partnership, joint venture, agency or employment relationship, or as granting a franchise under federal or state law. The relationship of Company to Customer is that of an independent contractor and not that of an agent or employee of the Customer. It is expressly understood and agreed by the parties that Customer shall not have, nor exercise, any control or direction over the manner or methods by which Company provides, other than the right to require that the performance of such be in accordance and consistent with the terms set forth in this Agreement.
- 7.3 Amendments and Waiver. This Agreement may be amended or modified by, and only by a written instrument executed by all the Parties hereto. The terms of this Agreement may be waived by, and only by, a written instrument executed by the Party against whom such waiver is sought to be enforced. No waiver of any term of this Agreement by either Party shall be deemed to be a further or continuing waiver of any other term of this Agreement.

- 7.4 Section and Other Headings. The section and other headings contained in this Agreement are for convenience of reference only and shall not in any way affect the meaning or interpretation of this Agreement.
- 7.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.
- 7.6 Assignment and Parties of Interest. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. This Agreement shall not be assigned by Customer without the prior written consent of Company. The obligations of Company hereunder may be performed directly by Company or by any third-party independent contractor, agent or representative.
- 7.7 No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm or corporation, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement. All of the provisions of this Agreement are solely for the benefit of the Parties hereto, and none of the other provisions of this Agreement shall inure to the benefit of any person not a Party to the Agreement, and third parties shall have no rights hereunder.
- 7.8 Entire Agreement. The Parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, whether oral or written, and all other communications between the Parties relating to the subject matter of the Agreement.
- 7.9 Applicable Law. This Agreement has been accepted and made performable in Comal County, Texas. This Agreement and the rights and obligations of the parties hereto shall be construed under and governed by the laws of the State of Texas, without giving effect to principles of conflict of laws. Exclusive venue for resolution of any disputes between the parties related to the subject matter hereof shall be in Comal County, Texas.
- 7.10 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.
- 7.11 Publicity. Customer grants Company the right to make public general references to Customer and to publicly disclose by name, in Company's promotional materials and elsewhere, that Company is providing Customer with the type of services provided

hereunder; upon Customer's written request, Company will remove references where reasonably possible in a reasonable timeframe.

- 7.12 No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.
- 7.13 Force Majeure. A Party's performance of its obligations hereunder shall be excused for any delay or failure resulting directly or indirectly from acts or conditions that are beyond the reasonable control of such Party, including any foreign or domestic embargo, product detention, seizure, act of God, fire, flood, storm, explosion, riot, strike, insurrection, continuance of war, or the passage or enactment of any law or ordinance, regulation, ruling or order (each a "Force Majeure Event"). Subject to the provisions herein, a Party's performance of its obligations affected by Force Majeure Events will be suspended for the duration of such Force Majeure Event. If any Force Majeure Event prevents a Party's performance for a period of thirty (30) days or more, either Party may terminate this Agreement without any further liability, except for any outstanding payments for obligations fulfilled by Party that are outstanding prior to the date of termination, and as otherwise set forth herein.
- 7.14 Limited Time for Action. No action, regardless of form, arising out of the services under this agreement, may be brought by either party more than six (6) months after the cause of action as accrued, except that an action for nonpayment may be brought within one (1) year of the last payment.
- 7.15 No Personal Liability. Customer agrees that no personal liability shall extend to any officer, director, member, agent or employee of Provider. Customer shall look solely to the assets of Provider for satisfaction of this Agreement.