

**Appendix 1**  
**TERMS AND CONDITIONS**

**1. LICENSE AND SUPPORT.** Subject to the terms, conditions and restrictions set forth in this Agreement, including payment of the Subscription Fees set forth in the Order Form, ThreatMate, Inc. ("COMPANY") hereby grants, and the customer designated on the Order Form ("CUSTOMER") hereby accepts, a non-exclusive, non-transferable, right and license, to access and use, solely for its internal business purposes, (i) the subscription service identified on the Order Form (the "Service"), in accordance with the user documentation provided with the Service ("Documentation"), and (ii) the Documentation, both for the Subscription Term set forth in the applicable Order Form. Use of the Service is restricted and subject to the limitations set forth in the Order Form. During the Subscription Term, COMPANY will support the Service in accordance with the Support and Service Level Policy attached as Appendix 2.

**2. TERM; RENEWAL; TERMINATION**

**2.1 Term of Agreement.** This Agreement is effective as of the Order Form Effective Date and will continue for the Subscription Term specified in the Order Form ("Initial Term"), unless terminated or renewed in accordance with this Section 2.

**2.2 Renewal.** The Agreement will automatically renew for additional one (1) year terms ("Renewal Term"), unless either party has given the other party written notice of non-renewal at least ninety (90) days prior to the end of an Initial Term or Renewal Term. Rates for any Renewal Term will not exceed the previous year's rates by more than the rate of inflation under the Consumer Price Index (All Urban Index, latest year for which statistics are available) plus five percent (5%), unless the parties agree otherwise in writing.

**2.3 Termination.** This Agreement and any Order Form may be terminated only if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days or receipt of notice of the breach from the non-breaching party. CUSTOMER may not terminate the Agreement or any Order Form for convenience or for any reason other than as expressly allowed in this Section 2 and in Section 11.7.

**3. FEES; PAYMENT TERMS.** Subscription Fees are specified on the Order Form. All fees will be invoiced upon the Effective Date of the Order Form. Unless otherwise set forth in the Order Form, payment terms are Net 30 days from the date of invoice. CUSTOMER shall be responsible for all taxes on the fees, except for taxes on COMPANY's income. Late payments are subject to interest at the rate of one percent (1%) per month or the maximum rate allowed under applicable law, whichever is less.

**4. RESTRICTIONS; PROPRIETARY RIGHTS.** CUSTOMER shall not: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, user interface techniques or algorithms of the Service or disclose any of the foregoing; (ii) encumber, transfer, manufacture, distribute, sell, sublicense, assign, provide, lease, lend, or use for timesharing or service bureau purposes (except as expressly provided in the Order Form) the Service or Documentation; (iii) copy, modify, adapt, translate, incorporate into or with other Service (except as otherwise provided in the Order Form), or create a derivative work of any part of the Service or Documentation; or (iv) attempt to circumvent any user limits, timing or use restrictions that are built into the Service. The Service is the proprietary intellectual property of COMPANY that contains trade secrets and is protected by copyright law. Subject to any license granted hereunder, COMPANY retains sole and exclusive ownership of all right, title, and interest in and to the Service and any other technology used to provide it. Any and all enhancements, modifications, corrections and derivative works that are made to the Service will be considered part of the Service for the purposes of this Agreement and will be owned by COMPANY.

**5. PUBLICITY.** CUSTOMER agrees to (a) participate in a press release following the execution of this Agreement naming CUSTOMER as a customer of COMPANY, (b) allow its name to be used in sales materials and user literature, which references COMPANY's customers generally, and (c) the use of its name, without endorsement, in a listing of COMPANY's customers. CUSTOMER shall also make reasonable efforts to, upon COMPANY's prior reasonable request, serve as a reference account and to participate in case studies and other promotional activity.

**6. CONFIDENTIALITY.** Each party ("Recipient") shall maintain as confidential and shall not disclose (except to its employees, accountants, attorneys, advisors, affiliates, outsourcers and third party service providers of Recipient with a need to know in connection with Recipient's performance under this Agreement, and who have been advised of the obligation of confidentiality hereunder), copy or use for purposes other than the performance of this Agreement, any information which relates to the other party's ("Discloser") business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement ("Confidential Information"), and Recipient agrees to protect all received Confidential Information with the same degree of care that it would use with its own Confidential Information and to prevent unauthorized, negligent or inadvertent use, disclosure or publication thereof. Breach of this Section may cause irreparable harm and damage to Discloser. Thus, in addition to all other remedies available at law or in equity, Discloser shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use. Recipient shall be liable to Discloser for any use or disclosure in violation of this Section by Recipient or its affiliates, employees, third party service provider or any other related party. Confidential Information shall not include information that (a) is already known prior to the disclosure by Recipient; (b) is or becomes publicly known through no breach by Recipient of this Agreement; (c) is independently developed without the use of Discloser's Confidential Information and evidence exists to substantiate such independent development; (d) information that is obtained from a third party, and that third party is not, in good faith belief to Recipient, under any legal obligation of confidentiality; or (e) Recipient receives written permission from the Discloser for the right to disclose any Confidential Information. Upon termination of this Agreement, Recipient shall within thirty (30) days return all Confidential Information to the Discloser, and CUSTOMER shall cease use of the Service and Documentation.

**7. CUSTOMER DATA.** CUSTOMER's use of the Service does not require COMPANY to have access to CUSTOMER's systems or to access, process or store CUSTOMER Data [is this a correct statement?]. Nevertheless, COMPANY is committed to having technical, administrative, and system safeguards in place to secure any data that CUSTOMER provides to COMPANY under this Agreement ("Customer Data"). As a result, COMPANY has implemented industry standard procedures, practices and infrastructure to protect all Customer Data. COMPANY handles and protects all Customer Data, including without limitation personally identifiable information, in compliance with all applicable data protection laws and in accordance with the additional terms contained in COMPANY's Privacy Policy found at <https://www.threatmate.com/legal>. CUSTOMER grants to COMPANY a non-exclusive, worldwide right to use Customer Data (a) in order to provide the Services to CUSTOMER; (b) to compile, use and disclose anonymous, aggregated statistics, provided that no such information will directly identify and cannot be used to identify CUSTOMER; and (c) as necessary to maintain and improve the Service. CUSTOMER retains all rights, title and interest in and ownership of Customer Data. CUSTOMER represents and warrants that use and supply of Customer Data by COMPANY and CUSTOMER in connection with the Service, (i) are legally and rightfully authorized, (ii) do not infringe upon the intellectual property rights of any third party, and (iii) comply with all applicable local, state, national and international laws and regulations, including without limitation those laws and regulations related to privacy, data use, data protection and export control.

**8. LIMITED WARRANTY.** COMPANY represents and warrants that the Service will conform in all material respects to the Documentation during the Warranty Period, which shall mean the Initial Term and any Renewal Term. If CUSTOMER notifies COMPANY in writing of a nonconformity of the Service during the Warranty Period, COMPANY will, at its option and expense, (a) correct any nonconformities in the Service that cause the Service to fail to conform to the Documentation, or (b) provide to CUSTOMER a pro rata refund of any prepaid but unutilized Subscription Fees applicable to the remainder of the Subscription Term. The limited warranty set forth in this Section shall be void if the Service nonconformity is caused by (i) the use or operation of the Service with an application or in an environment other than that recommended in writing by COMPANY, (ii) modifications to or customizations of the Service without the express written authorization of COMPANY, (iii) accident, disaster or event of force majeure, (iv) misuse, fault or negligence of or by CUSTOMER, (v) use of the Service in a manner for which it was not designed, (vi) causes external to the Service such as, but not limited to, power failure or electrical power surges. THE WARRANTY AND REMEDIES SET FORTH IN THIS SECTION 8 REPRESENT COMPANY'S SOLE WARRANTY AND CUSTOMER'S SOLE REMEDY IN THE EVENT OF BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION,

COMPANY MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

**9. LIMITATION OF LIABILITY.** THE CUMULATIVE LIABILITY OF COMPANY TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO COMPANY UNDER THE APPLICABLE ORDER FORM WITHIN THE YEAR PRECEDING THE CLAIM. IN NO EVENT WILL COMPANY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT.

**10. INDEMNIFICATION.** If a third party claims that the Service infringes any patent, copyright, or trade secret, COMPANY will defend CUSTOMER against such claim at COMPANY's expense and pay all damages finally awarded through judgment or settlement, provided that CUSTOMER promptly notifies COMPANY in writing of the claim, allows COMPANY sole control of the defense and/or settlement, and cooperates with COMPANY in, the defense or settlement of such action. If such a claim is made or appears possible, COMPANY may, at its option, secure for CUSTOMER the right to continue to use the Service, modify or replace the Service so that it is non-infringing, or, if neither of the foregoing options is available in COMPANY's reasonable opinion, terminate this Agreement and refund to CUSTOMER any unamortized pre-paid fees for use of the Service. COMPANY shall have no liability or obligation hereunder with respect to any infringement claim if such infringement is caused by (i) compliance with CUSTOMER's instructions, designs, guidelines, plans or specifications; (ii) CUSTOMER's use of the Service other than as specified in the applicable Documentation; (iii) modification of the Service by any person other than as authorized in writing by COMPANY; or (iv) the combination, operation or use of the Service with other product(s) or services not supplied by COMPANY, where the Service would not by itself be infringing. THIS PARAGRAPH STATES COMPANY'S ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

**11. GENERAL.**

11.1 **Entire Agreement.** This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. If these Terms and Conditions conflict with any of the terms or conditions of any Order Form, then, unless otherwise provided herein, the terms and conditions of such Order Form will control solely with respect to the products or services covered by such Order Form. Any purchase orders issued by CUSTOMER shall be deemed to be for CUSTOMER's convenience only and, notwithstanding acceptance of such orders by COMPANY, shall in no way change, override, or supplement this Agreement, and any terms contained in a purchase order will be non-binding and inapplicable.

11.2 **Waiver.** Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A waiver of any provision, breach or default by either party or a party's delay exercising its rights shall not constitute a waiver of any other provision, breach or default.

11.3 **Independent Contractor.** COMPANY is an independent contractor and not an employee of CUSTOMER. At no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party, or be considered the agent, partner, joint venturer, employer or employee of the other party.

11.4 **Notices.** All notices or other communications required to be given hereunder shall be in writing and delivered either by U.S. mail, certified, return receipt requested, postage prepaid; by overnight courier; or as otherwise requested by the receiving party, to the address first listed above. Notices shall be effective upon their receipt by the party to whom they are addressed.

11.5 **Assignment.** This Agreement may not be assigned by CUSTOMER without COMPANY's prior written consent.

11.6 **Compliance with Laws.** Each party will be responsible for compliance with all legal requirements related to its performance under this Agreement, including all applicable export laws and those laws related to the protection, privacy and disclosure of data and information.

11.7 **Force Majeure.** Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, or strikes (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event; provided that a party may terminate this Agreement in the event the other party is prevented from performing by the Force Majeure Event for a period longer than thirty (30) days, and, if CUSTOMER is the terminating party, COMPANY shall provide a refund of subscription fees on a pro rata basis applicable to the remainder of the Subscription Term.

11.8 **Governing Law and Disputes.** This Agreement and any dispute arising hereunder shall be governed by and interpreted and construed in accordance with the laws of the State of California, without regard to conflict of law principles, and shall be subject to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California, and each party consents to the exclusive personal jurisdiction and venue of such courts.

11.9 **Non-Solicitation.** Neither party shall directly or indirectly solicit, employ or engage any employee of the other party with whom the non-employing party came into contact through the performance of this Agreement during the Term of this Agreement and for a period of one (1) year thereafter. If any court or other adjudicatory body determines that the foregoing provision is unenforceable because of its duration or scope, the court or adjudicatory body has the power to reduce the duration or scope of the provision, as the case may be, so that in its reduced form the provision is enforceable. Such power includes the authority to reform the provision by rewriting it, if required, so that it conforms to applicable law and carries out the parties' intentions under this Agreement.

11.10 **Survival.** The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 3, 4 and 6 through 11.